

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

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *186*
 2 INTRODUCED BY *B. Walker - Meyer*
 3 BY REQUEST OF THE STATE AUDITOR AND
 4 SECURITIES COMMISSIONER

5
 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
 9 30-10-209, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 30-10-103, MCA, is amended to read:
 13 "30-10-103. Definitions. When used in parts 1 through
 14 3 of this chapter, unless the context requires otherwise,
 15 the following definitions apply:

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

18 (2) "Salesman" means any individual other than a
 19 broker-dealer who represents a broker-dealer or issuer in
 20 effecting or attempting to effect sales of securities. A
 21 partner, officer, or director of a broker-dealer or issuer
 22 is a salesman only if he otherwise comes within this
 23 definition. "Salesman" does not include an individual who
 24 represents an issuer in:

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

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

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

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

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

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

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

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

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

1 principal, interest, or dividends.

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

10 (a) an investment adviser representative;

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

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

16 (d) a broker-dealer;

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

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

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

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

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

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities;

15 (ii) manages accounts or portfolios of clients;

16 (iii) determines which recommendation or advice
17 regarding securities should be given;

18 (iv) solicits, offers, or negotiates for the sale or
19 sells investment advisory services; or

20 (v) supervises employees who perform any of the
21 foregoing.

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

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

1 proposes to issue any security, except that with respect to
 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
 6 performing similar functions) or of the fixed, restricted
 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 ~~(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.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 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
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 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
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 ~~(11)~~(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.

18 ~~(12)~~(13) "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 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

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
 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
 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."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 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 sell
 25 or buy is made in this state, whether or not either party is

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

8 (4) For the purpose of this section, an offer to buy
 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
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

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:

25 (i) not published in this state; or

1 (ii) published in this state but has had more than
2 two-thirds of its circulation outside this state during the
3 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."

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
17 salesman, except in transactions exempt under 30-10-105,
18 unless he is registered under parts 1 through 3 of this
19 chapter.

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

24 (3) It is unlawful for any person to transact business
25 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
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
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
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

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
 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
 8 the provisions of parts 1 through 3 of this chapter, and
 9 provide that upon failure to so comply, the salesman shall
 10 be liable to any and all persons who may suffer loss by
 11 reason thereof.

12 (5) The application shall contain whatever information
 13 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 (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

1 issuer or broker-dealer shall promptly notify the
 2 commissioner.

3 (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
 12 investment adviser, or investment adviser representative may
 13 be renewed by filing prior to the expiration thereof an
 14 application containing such information as the commissioner
 15 may require to indicate any material change in the
 16 information contained in the original application or any
 17 renewal application for registration as a broker-dealer,
 18 salesman, or investment adviser, or investment adviser
 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

1 commissioner.

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

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:

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

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 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

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 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 in
 14 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;

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

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

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

4 ~~{11}~~(13) Upon the entry of the order under subsection
 5 ~~{10}~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 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
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 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

1 may by order cancel the registration or application.
 2 ~~{13}~~(15) The commissioner may, after suspending or
 3 revoking registration of any broker-dealer, salesman, or
 4 investment adviser, ~~under--subsection--{10}~~ or investment
 5 adviser representative, impose a fine not to exceed \$5,000
 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
 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
 18 investment adviser representative in this state and may be
 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
 22 pay a fine also constitutes a forfeiture of his right to do
 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:

1 "30-10-209. Fees. The following fees shall be paid in
 2 advance under the provisions of parts 1 through 3 of this
 3 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
 12 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

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

1 received. In the event of overpayment, only those amounts in
 2 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 NEW SECTION. 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-

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.

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

David L. Hunter DATE 1/21/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Williams DATE 1/26/87
BOB WILLIAMS, PRIMARY SPONSOR
Fiscal Note for SB186, as introduced.

SB 186

APPROVED BY COMM. ON BUSINESS & INDUSTRY

1 Senate BILL NO. 186
2 INTRODUCED BY B. Walker - Meyer
3 BY REQUEST OF THE STATE AUDITOR AND
4 SECURITIES COMMISSIONER

5
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8 AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND
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- 4 (c) effecting transactions with existing employees,
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6 other remuneration is paid or given directly or indirectly
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11 does not include:

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13 trust company, or insurance company; or
- 14 (b) a person who has no place of business in this
15 state if he effects transactions in this state exclusively
16 with or through the issuers of the securities involved in
17 the transactions, other broker-dealers, or banks, savings
18 institutions, trust companies, insurance companies,
19 investment companies as defined in the Investment Company
20 Act of 1940, pension or profit-sharing trusts, or other
21 financial institutions or institutional buyers, whether
22 acting for themselves or as trustee.
- 23 (4) "Registered broker-dealer" means a broker-dealer
24 registered pursuant to 30-10-201.
- 25 (5) "Guaranteed" means guaranteed as to payment of

1 principal, interest, or dividends.

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

9 "Investment adviser" does not include:

10 (a) an investment adviser representative;

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

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

16 ~~(c)~~(d) a broker-dealer;

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

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

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

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

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

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities;

15 (ii) manages accounts or portfolios of clients;

16 (iii) determines which recommendation or advice
17 regarding securities should be given;

18 (iv) solicits, offers, or negotiates for the sale or
19 sells investment advisory services; or

20 (v) supervises employees who perform any of the
21 foregoing.

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

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

1 proposes to issue any security, except that with respect to
 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
 6 performing similar functions) or of the fixed, restricted
 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 ~~(9)~~ "Nonissuer" means not directly or indirectly
 13 for the benefit of the issuer.

14 ~~(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 ~~(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.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 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
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 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
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 ~~(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.

18 ~~(13)~~ "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 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

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
 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
 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."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 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 sell
 25 or buy is made in this state, whether or not either party is

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

8 (4) For the purpose of this section, an offer to buy
 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
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

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:

25 (i) not published in this state; or

1 (ii) published in this state but has had more than
2 two-thirds of its circulation outside this state during the
3 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."

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
17 salesman, except in transactions exempt under 30-10-105,
18 unless he is registered under parts 1 through 3 of this
19 chapter.

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

24 (3) It is unlawful for any person to transact business
25 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
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
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
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

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
 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
 8 the provisions of parts 1 through 3 of this chapter, and
 9 provide that upon failure to so comply, the salesman shall
 10 be liable to any and all persons who may suffer loss by
 11 reason thereof.

12 (5) The application shall contain whatever information
 13 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 ~~(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

1 issuer or broker-dealer shall promptly notify the
 2 commissioner.

3 (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
 12 investment adviser, or investment adviser representative may
 13 be renewed by filing prior to the expiration thereof an
 14 application containing such information as the commissioner
 15 may require to indicate any material change in the
 16 information contained in the original application or any
 17 renewal application for registration as a broker-dealer,
 18 salesman, or investment adviser, or investment adviser
 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

1 commissioner.

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

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:

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

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 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

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 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 in
 14 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;

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

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

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

4 ~~(11)~~(13) Upon the entry of the order under subsection
 5 ~~(10)~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 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
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 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

1 may by order cancel the registration or application.

2 ~~(13)~~(15) The commissioner may, after suspending or
3 revoking registration of any broker-dealer, salesman, or
4 investment adviser, ~~under--subsection--(18)~~ or investment
5 adviser representative, impose a fine not to exceed \$5,000
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
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
18 investment adviser representative in this state and may be
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
22 pay a fine also constitutes a forfeiture of his right to do
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:

1 "30-10-209. Fees. The following fees shall be paid in
2 advance under the provisions of parts 1 through 3 of this
3 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
12 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

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

1 received. In the event of overpayment, only those amounts in
 2 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 NEW SECTION. 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-

1 *Senate* BILL NO. 186
 2 INTRODUCED BY *B. Walker-Meyer*
 3 BY REQUEST OF THE STATE AUDITOR AND
 4 SECURITIES COMMISSIONER

5
 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
 9 30-10-209, MCA."
 10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 30-10-103, MCA, is amended to read:
 13 "30-10-103. Definitions. When used in parts 1 through
 14 3 of this chapter, unless the context requires otherwise,
 15 the following definitions apply:
 16 (1) "Commissioner" means securities commissioner of
 17 this state.
 18 (2) "Salesman" means any individual other than a
 19 broker-dealer who represents a broker-dealer or issuer in
 20 effecting or attempting to effect sales of securities. A
 21 partner, officer, or director of a broker-dealer or issuer
 22 is a salesman only if he otherwise comes within this
 23 definition. "Salesman" does not include an individual who
 24 represents an issuer in:
 25 (a) effecting a transaction in a security exempted by

1 subsections (1), (2), (3), (9), (10), (11), or (12) of
 2 30-10-104;
 3 (b) effecting transactions exempted by 30-10-105; or
 4 (c) effecting transactions with existing employees,
 5 partners, or directors of the issuer if no commission or
 6 other remuneration is paid or given directly or indirectly
 7 for soliciting any person in this state.
 8 (3) "Broker-dealer" means any person engaged in the
 9 business of effecting transactions in securities for the
 10 account of others or for his own account. "Broker-dealer"
 11 does not include:
 12 (a) a salesman, issuer, bank, savings institution,
 13 trust company, or insurance company; or
 14 (b) a person who has no place of business in this
 15 state if he effects transactions in this state exclusively
 16 with or through the issuers of the securities involved in
 17 the transactions, other broker-dealers, or banks, savings
 18 institutions, trust companies, insurance companies,
 19 investment companies as defined in the Investment Company
 20 Act of 1940, pension or profit-sharing trusts, or other
 21 financial institutions or institutional buyers, whether
 22 acting for themselves or as trustee.
 23 (4) "Registered broker-dealer" means a broker-dealer
 24 registered pursuant to 30-10-201.
 25 (5) "Guaranteed" means guaranteed as to payment of



1 principal, interest, or dividends.

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

9 "Investment adviser" does not include:

10 (a) an investment adviser representative;

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

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

16 (d) a broker-dealer;

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

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

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

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

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

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities;

15 (ii) manages accounts or portfolios of clients;

16 (iii) determines which recommendation or advice
17 regarding securities should be given;

18 (iv) solicits, offers, or negotiates for the sale or
19 sells investment advisory services; or

20 (v) supervises employees who perform any of the
21 foregoing.

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

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

1 proposes to issue any security, except that with respect to
 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
 6 performing similar functions) or of the fixed, restricted
 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 ~~f8~~(9) "Nonissuer" means not directly or indirectly
 13 for the benefit of the issuer.

14 ~~f9~~(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 ~~f10~~(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.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 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
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 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
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 ~~f11~~(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.

18 ~~f12~~(13) "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 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

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
 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
 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."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 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 sell
 25 or buy is made in this state, whether or not either party is

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

8 (4) For the purpose of this section, an offer to buy
 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
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

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:

25 (i) not published in this state; or

1 (ii) published in this state but has had more than
2 two-thirds of its circulation outside this state during the
3 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."

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
17 salesman, except in transactions exempt under 30-10-105,
18 unless he is registered under parts 1 through 3 of this
19 chapter.

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

24 (3) It is unlawful for any person to transact business
25 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
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
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
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

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
 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
 8 the provisions of parts 1 through 3 of this chapter, and
 9 provide that upon failure to so comply, the salesman shall
 10 be liable to any and all persons who may suffer loss by
 11 reason thereof.

12 (5) The application shall contain whatever information
 13 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 ~~(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

1 issuer or broker-dealer shall promptly notify the
 2 commissioner.

3 (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
 12 investment adviser, or investment adviser representative may
 13 be renewed by filing prior to the expiration thereof an
 14 application containing such information as the commissioner
 15 may require to indicate any material change in the
 16 information contained in the original application or any
 17 renewal application for registration as a broker-dealer,
 18 salesman, or investment adviser, or investment adviser
 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

1 commissioner.

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

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:

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

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 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

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 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 in
 14 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;

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

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

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

4 ~~(11)~~(13) Upon the entry of the order under subsection
 5 ~~(10)~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 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
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 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

1 may by order cancel the registration or application.

2 ~~{13}~~(15) The commissioner may, after suspending or
 3 revoking registration of any broker-dealer, salesman, or
 4 investment adviser, ~~under--subsection--{10}~~ or investment
 5 adviser representative, impose a fine not to exceed \$5,000
 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
 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
 18 investment adviser representative in this state and may be
 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
 22 pay a fine also constitutes a forfeiture of his right to do
 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:

1 "30-10-209. Fees. The following fees shall be paid in
 2 advance under the provisions of parts 1 through 3 of this
 3 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
 12 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

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

1 received. In the event of overpayment, only those amounts in
 2 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 NEW SECTION. 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-

SENATE BILL NO. 186

INTRODUCED BY B. WILLIAMS, MEYER, TVEIT, HALLIGAN

BY REQUEST OF THE STATE AUDITOR AND

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 effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by

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

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

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

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

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

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

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

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



1 principal, interest, or dividends.

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

9 "Investment adviser" does not include:

10 (a) an investment adviser representative;

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

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

16 (d) a broker-dealer;

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

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

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

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

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

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities TO CLIENTS;

15 (ii) manages accounts or portfolios of clients;

16 ~~(iii) determines which recommendation or advice~~
17 ~~regarding securities should be given;~~

18 ~~(iv) (III) solicits, offers, or negotiates for the sale~~
19 ~~or sells investment advisory services; or~~

20 ~~(v) (IV) supervises employees who perform any of the~~
21 ~~foregoing.~~

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

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

1 proposes to issue any security, except that with respect to
 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
 6 performing similar functions) or of the fixed, restricted
 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 ~~{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.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 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
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 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
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 ~~{11}~~{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.

18 ~~{12}~~{13} "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 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

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
 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
 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."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 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 sell
 25 or buy is made in this state, whether or not either party is

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

8 (4) For the purpose of this section, an offer to buy
 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
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

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:

25 (i) not published in this state; or

1 (ii) published in this state but has had more than
2 two-thirds of its circulation outside this state during the
3 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."

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
17 salesman, except in transactions exempt under 30-10-105,
18 unless he is registered under parts 1 through 3 of this
19 chapter.

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

24 (3) It is unlawful for any person to transact business
25 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
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
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
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

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
 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
 8 the provisions of parts 1 through 3 of this chapter, and
 9 provide that upon failure to so comply, the salesman shall
 10 be liable to any and all persons who may suffer loss by
 11 reason thereof.

12 (5) The application shall contain whatever information
 13 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 (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

1 issuer or broker-dealer shall promptly notify the
 2 commissioner.

3 (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 (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
 14 application containing such information as the commissioner
 15 may require to indicate any material change in the
 16 information contained in the original application or any
 17 renewal application for registration as a broker-dealer,
 18 salesman, or investment adviser, or investment adviser
 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

1 commissioner.

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

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:

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

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 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

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 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 in
 14 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;

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

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

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

4 ~~(11)~~(13) Upon the entry of the order under subsection
 5 ~~(10)~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 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
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 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

1 may by order cancel the registration or application.
 2 ~~{13}~~(15) The commissioner may, after suspending or
 3 revoking registration of any broker-dealer, salesman, or
 4 investment adviser, ~~under--subsection--{10}~~ or investment
 5 adviser representative, impose a fine not to exceed \$5,000
 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
 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
 18 investment adviser representative in this state and may be
 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
 22 pay a fine also constitutes a forfeiture of his right to do
 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:

1 "30-10-209. Fees. The following fees shall be paid in
 2 advance under the provisions of parts 1 through 3 of this
 3 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
 12 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

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

1 received. In the event of overpayment, only those amounts in
 2 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 NEW SECTION. 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-

STANDING COMMITTEE REPORT

HOUSE

MARCH 13

19 86

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 186

do pass

do not pass

be concurred in

be not concurred in

as amended

statement of intent attached



REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 4, line 14

Following: "securities"

Insert: "to clients"

2) Page 4, lines 16 and 17

Strike: subsection (iii) in its entirety

Re-number: subsequent subsections

3) Page 12, line 9

Strike: "and the investment adviser representative"

Rep. Fred Thomas will sponsor

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