

SENATE BILL NO. 247

INTRODUCED BY MEYER, BRANDEWIE, MILLER

BY REQUEST OF THE STATE AUDITOR AND  
SECURITIES COMMISSIONER

IN THE SENATE

JANUARY 29, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 12, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1987	PRINTING REPORT.
FEBRUARY 16, 1987	SECOND READING, DO PASS.
FEBRUARY 17, 1987	ENGROSSING REPORT.
FEBRUARY 18, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 12, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 14, 1987	SECOND READING, CONCURRED IN.
MARCH 16, 1987	THIRD READING, CONCURRED IN. AYES, 94; NOES, 3.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 19, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 20, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *247*  
 2 INTRODUCED BY *Meyer* *Burrows*  
 3 *Miller* BY REQUEST OF THE STATE AUDITOR AND  
 4 SECURITIES COMMISSIONER

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103  
 8 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206,  
 9 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND  
 10 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

13 Section 1. Section 30-10-103, MCA, is amended to read:

14 "30-10-103. Definitions. When used in parts 1 through  
 15 3 of this chapter, unless the context requires otherwise,  
 16 the following definitions apply:

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

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

1 (a) effecting a transaction in a security exempted by  
 2 subsections (1), (2), (3), (8), (9), (10), or (11) ~~or--(12)~~  
 3 of 30-10-104;

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

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

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

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

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

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1 (5) "Guaranteed" means guaranteed as to payment of  
2 principal, interest, or dividends.

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

10 (b) The term includes a financial planner or other  
11 person who:

12 (i) as an integral component of other financially  
13 related services, provides the investment advisory services  
14 described in subsection (6)(a) to others for compensation,  
15 as part of a business; or

16 (ii) represents himself as providing the investment  
17 advisory services described in subsection (6)(a) to others  
18 for compensation.

19 (c) "Investment adviser" does not include:

20 (a)(i) a bank, savings institution, trust company, or  
21 insurance company;

22 (b)(ii) a lawyer, accountant, engineer, or teacher  
23 whose performance of these services is solely incidental to  
24 the practice of his profession;

25 (c)(iii) a broker-dealer;

1 (d)(iv) a publisher of any bona-fide newspaper, news  
2 column, newsletter, news magazine, or business or financial  
3 publication of ~~general, regular, and paid-circulation or~~  
4 service, whether communicated in hard copy form or by  
5 electronic means or otherwise, that does not consist of the  
6 rendering of advice on the basis of the specific investment  
7 situation of each client;

8 (e)(v) a person whose advice, analyses, or reports  
9 relate only to securities exempted by 30-10-104(1); or

10 (f) ~~a person who has no place of business in this~~  
11 ~~state if his only clients in this state are other investment~~  
12 ~~advisers, broker-dealers, banks, savings institutions, trust~~  
13 ~~companies, insurance companies, investment companies as~~  
14 ~~defined in the Investment Company Act of 1940, pension or~~  
15 ~~profit-sharing trusts, or other financial institutions or~~  
16 ~~institutional buyers, whether acting for themselves or as~~  
17 ~~trustees; or~~

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

21 (7) "Issuer" means any person who issues or proposes  
22 to issue any security, except that with respect to  
23 certificates of deposit, voting-trust certificates, or  
24 collateral-trust certificates or with respect to  
25 certificates of interest or shares in an unincorporated

1 investment trust not having a board of directors (or persons  
2 performing similar functions) or of the fixed, restricted  
3 management, or unit type, the term "issuer" means the person  
4 or persons performing the acts and assuming the duties of  
5 depositor or manager pursuant to the provisions of the trust  
6 or other agreement or instrument under which the security is  
7 issued.

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

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

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

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

22 (c) Any security given or delivered with or as a bonus  
23 on account of any purchase of securities or any other thing  
24 is considered to constitute part of the subject of the  
25 purchase and to have been offered and sold for value. A

1 purported gift of assessable stock is considered to involve  
2 an offer and sale. Every sale or offer of a warrant or right  
3 to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security  
5 which gives the holder a present or future right or  
6 privilege to convert into another security of the same or  
7 another issuer, is considered to include an offer of the  
8 other security.

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

14 (12) "Security" means any note; stock; treasury stock;  
15 bond; debenture; evidence of indebtedness; certificate of  
16 interest or participation in any profit-sharing agreement;  
17 collateral-trust certificate; preorganization certificate or  
18 subscription; transferable shares; investment contract;  
19 voting-trust certificate; certificate of deposit for a  
20 security; certificate of interest or participation in an  
21 oil, gas, or mining title or lease or in payments out of  
22 production under such a title or lease; or, in general, any  
23 interest or instrument commonly known as a security or any  
24 certificate of interest or participation in, temporary or  
25 interim certificate for, receipt for, guarantee of, or

1 warrant or right to subscribe to or purchase any of the  
2 foregoing. "Security" does not include any insurance or  
3 endowment policy or annuity contract under which an  
4 insurance company promises to pay a sum of money either in a  
5 lump sum or periodically for life or some other specified  
6 period.

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

10 (14) "Transact", "transact business", or "transaction"  
11 includes the meanings of the terms "sale", "sell", and  
12 "offer".

13 Section 2. Section 30-10-104, MCA, is amended to read:

14 "30-10-104. Exempt securities. Sections 30-10-202  
15 through 30-10-207 do not apply to any of the following  
16 securities:

17 (1) any security (including a revenue obligation)  
18 issued or guaranteed by the United States, any state, any  
19 political subdivision of a state, or any agency or corporate  
20 or other instrumentality of one or more of the foregoing;  
21 provided, however, 30-10-202 through 30-10-207 apply to a  
22 security issued by any of the foregoing that is payable  
23 solely from payments to be received in respect of property  
24 or money used under a lease, sale, or loan arrangement by or  
25 for a nongovernmental industrial or commercial enterprise,

1 unless such enterprise or any security of which it is the  
2 issuer is within any of the exemptions enumerated in  
3 subsections (2) through ~~(9)~~ (13) of this section;

4 (2) any security issued or guaranteed by Canada, any  
5 Canadian province, any political subdivision of any such  
6 province, or any agency or corporate or other  
7 instrumentality of one or more of the foregoing or any other  
8 foreign government with which the United States currently  
9 maintains diplomatic relations if the security is recognized  
10 as a valid obligation by the issuer or guarantor;

11 (3) any security issued by and representing an  
12 interest in or a debt of or guaranteed by any bank organized  
13 under the laws of the United States or any bank, savings  
14 institution, or trust company organized and supervised under  
15 the laws of any state;

16 (4) any security issued by and representing an  
17 interest in or a debt of or guaranteed by any federal  
18 savings and loan association or any building and loan or  
19 similar association organized under the laws of any state  
20 and authorized to do business in this state;

21 ~~(5) any insurance or endowment policy or annuity~~  
22 ~~contract or optional annuity contract issued by a~~  
23 ~~corporation subject to the supervision of the insurance~~  
24 ~~commissioner;~~

25 ~~(6)~~ (5) any security issued or guaranteed by any

1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~(7)~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~(8)~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

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

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

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~(8)~~(7)(d), means the

1 most recent year for which audited financial statements are  
 2 available, provided that such statements cover a fiscal  
 3 period ended not more than 15 months from the commencement  
 4 of the offering.

5 (e) if the offering is of stock or shares, other than  
 6 preferred stock or shares, such securities have voting  
 7 rights and such rights include the right to have at least as  
 8 many votes per share and the right to vote on at least as  
 9 many general corporate decisions as each of the issuer's  
 10 outstanding classes of stock or shares, except as otherwise  
 11 required by law;

12 (f) if the offering is of stock or shares, other than  
 13 preferred stock or shares, such securities are owned  
 14 beneficially or of record on any date within 6 months prior  
 15 to the commencement of the offering by at least 1,200  
 16 persons and on such date there are at least 750,000 such  
 17 shares outstanding with an aggregate market value, based on  
 18 the average bid price for that day, of at least \$3,750,000.  
 19 In connection with the determination of the number of  
 20 persons who are beneficial owners of the stock or shares of  
 21 an issuer, the issuer or broker-dealer may rely in good  
 22 faith for the purposes of this section upon written  
 23 information furnished by the record owners.

24 (9)(8) any security issued by any person organized and  
 25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
 2 social, athletic, or reformatory purposes if the issuer pays  
 3 a fee of \$50 and files with the commissioner 20 days prior  
 4 to the offering a written notice specifying the terms of the  
 5 offer and the commissioner does not disallow the exemption  
 6 in writing within such 20-day period;

7 (10)(9) any commercial paper which arises out of a  
 8 current transaction or the proceeds of which have been or  
 9 are to be used for current transaction and which evidences  
 10 an obligation to pay cash within 9 months of the date of  
 11 issuance, exclusive of days of grace, or any renewal of such  
 12 paper which is likewise limited or any guarantee of such  
 13 paper or of any such renewal, when such commercial paper is  
 14 sold to the banks or insurance companies;

15 (11)(10) any investment contract issued in connection  
 16 with an employee's stock purchase, savings, pension,  
 17 profit-sharing, or similar benefit plan;

18 (12)(11) any security for which the commissioner  
 19 determines by order that an exemption would better serve the  
 20 purposes of 30-10-102 than would registration. The fee for  
 21 this exemption must be as prescribed in 30-10-209(4).

22 (13)(12) any security listed or approved for listing  
 23 upon notice of issuance on the New York stock exchange, the  
 24 American stock exchange, the Pacific stock exchange, the  
 25 Midwest stock exchange, or any other stock exchange



1 registered with the federal securities and exchange  
 2 commission and approved by the commissioner; any other  
 3 security of the same issuer that is of senior or  
 4 substantially equal rank; any security called for by  
 5 subscription rights or warrants so listed or approved; or  
 6 any warrant or right to purchase or subscribe to any of the  
 7 foregoing;

8 ~~(14)~~(13) any national market system security listed or  
 9 approved for listing upon notice of issuance on the national  
 10 association of securities dealers automated quotation system  
 11 or any other national quotation system approved by the  
 12 commissioner; any other security of the same issuer that is  
 13 of senior or substantially equal rank; any security called  
 14 for by subscription rights or warrants so listed or  
 15 approved; or any warrant or right to purchase or subscribe  
 16 to any of the securities listed in this subsection."

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

18 "30-10-105. Exempt transactions. Except as in this  
 19 section expressly provided, 30-10-201 through 30-10-207  
 20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
 22 effected through a broker-dealer or not. A transaction is  
 23 presumed to be isolated if it is one of not more than three  
 24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
 2 if:

3 (i) quotations for the securities to be offered or  
 4 sold (or the securities issuable upon exercise of any  
 5 warrant or right to purchase or subscribe to such  
 6 securities) are reported by the automated quotations system  
 7 operated by the national association of securities dealers,  
 8 inc., (NASDAQ) or by any other quotation system approved by  
 9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
 11 interest or dividend provision and there has been no default  
 12 during the current fiscal year or within the 3 preceding  
 13 fiscal years, or during the existence of the issuer and any  
 14 predecessors if less than 3 years, in the payment of  
 15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
 17 exemption specified in subsection (2)(a) with respect to a  
 18 specific security. Upon the entry of such an order, the  
 19 commissioner shall promptly notify all registered  
 20 broker-dealers that it has been entered and of the reasons  
 21 therefor and that within 15 days of the receipt of a written  
 22 request the matter will be set down for hearing. If no  
 23 hearing is requested and none is ordered by the  
 24 commissioner, the order will remain in effect until it is  
 25 modified or vacated by the commissioner. If a hearing is

1 requested or ordered, the commissioner, after notice of and  
 2 opportunity for hearing to all interested persons, may  
 3 modify or vacate the order or extend it until final  
 4 determination. No order under this subsection may operate  
 5 retroactively. No person may be considered to have violated  
 6 parts 1 through 3 of this chapter by reason of any offer or  
 7 sale effected after the entry of an order under this  
 8 subsection if he sustains the burden of proof that he did  
 9 not know and in the exercise of reasonable care could not  
 10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
 12 registered broker-dealer pursuant to an unsolicited order or  
 13 offer to buy, but the commissioner may require that the  
 14 customer acknowledge upon a specified form that the sale was  
 15 unsolicited and that a signed copy of each form be preserved  
 16 by the broker-dealer for a specified period;

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

20 (5) any transaction by an executor, administrator,  
 21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 22 or conservator in the performance of his official duties as  
 23 such;

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

1 chapter;

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

9 (8) (a) any transaction pursuant to an offer made in  
 10 this state directed by the offeror to not more than 10  
 11 persons (other than those designated in subsection (7))  
 12 during any period of 12 consecutive months, if:

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

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

22 (b) For the purpose of the exemption provided for in  
 23 subsection (8)(a), an offer to sell is made in this state,  
 24 whether or not the offeror or any of the offerees is then  
 25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
2 received at the place to which it is directed (or at any  
3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
5 or subscription if:

6 (a) no commission or other remuneration is paid or  
7 given directly or indirectly for soliciting any prospective  
8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
12 security holders of the issuer, including persons who at the  
13 time of the transaction are holders of convertible  
14 securities, nontransferable warrants, or transferable  
15 warrants exercisable within not more than 90 days of their  
16 issuance, if:

17 (a) no commission or other remuneration (other than a  
18 standby commission) is paid or given directly or indirectly  
19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
21 terms of the offer and the commissioner does not by order  
22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
24 registration statements have been filed under both parts 1  
25 through 3 of this chapter and the Securities Act of 1933 if

1 ~~no stop-order or~~ refusal, denial, suspension, or revocation  
2 order is in effect and no public proceeding or examination  
3 looking toward such an order is pending under either law;

4 (12) any offer (but not a sale) of a security for which  
5 a registration statement has been filed under parts 1  
6 through 3 of this chapter and the commissioner in his  
7 discretion does not disallow the offer in writing within 10  
8 days of such filing;

9 (13) the issuance of any stock dividend, whether the  
10 corporation distributing the dividend is the issuer of the  
11 stock or not, if nothing of value is given by stockholders  
12 for the distribution other than the surrender of a right to  
13 a cash dividend where the stockholder can elect to take a  
14 dividend in cash or stock;

15 (14) any transaction incident to a right of conversion  
16 or a statutory or judicially approved reclassification,  
17 recapitalization, reorganization, quasi-reorganization,  
18 stock split, reverse stock split, merger, consolidation, or  
19 sale of assets;

20 (15) any transaction in compliance with such rules as  
21 the commissioner in his discretion may adopt to serve the  
22 purposes of 30-10-102; ~~or.~~ The commissioner may in his  
23 discretion require that 30-10-201 through 30-10-207 apply to  
24 any or all transactional exemptions adopted by rule.

25 (16) any transaction ~~pursuant to the Montana Capital~~

~~Company Act, Title 90, chapter 8, provided that a Montana capital company must by a certified Montana capital company as defined in 90-8-104, provided that such company first file files all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit."~~

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

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

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

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

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

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

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than \$1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. ~~Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner~~

1 ~~may, upon request and for good cause shown by an applicant,~~  
 2 ~~waive the residency requirement. Payment of the waiver fee~~  
 3 ~~shall be as prescribed in 30-10-209.~~ A salesman acting as  
 4 agent for an issuer or broker-dealer who is not currently in  
 5 compliance with the financial responsibility requirements  
 6 prescribed by the Securities Exchange Act of 1934 and by  
 7 regulations adopted under it, may, in the discretion of the  
 8 commissioner, be required to file with the commissioner a  
 9 bond of a surety company duly authorized to transact  
 10 business in this state. The bond shall be in an amount  
 11 determined by the commissioner, payable to the state of  
 12 Montana and conditioned upon the faithful compliance with  
 13 the provisions of parts 1 through 3 of this chapter, and  
 14 provide that upon failure to so comply, the salesman shall  
 15 be liable to any and all persons who may suffer loss by  
 16 reason thereof.

17 (5) The application shall contain whatever information  
 18 the commissioner requires. No registration application of a  
 19 broker-dealer, salesman, investment adviser, or investment  
 20 adviser representative may be withdrawn before the  
 21 commissioner approves or denies such registration, without  
 22 the express written consent of the commissioner.

23 (6) When the registration requirements are complied  
 24 with met, the commissioner shall ~~approve the registration.~~  
 25 make the registration effective. No effective registration

1 of a broker-dealer, salesman, investment adviser, or  
 2 investment adviser representative may be withdrawn without  
 3 the express written consent of the commissioner.

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

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

1 application for registration of a successor, to become  
2 effective upon approval of the commissioner.

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

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

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

1 ~~national securities exchange or national securities~~  
 2 ~~association registered under the Securities Exchange Act of~~  
 3 ~~1934 or is the subject of a United States post office fraud~~  
 4 ~~order, but:~~

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

8 ~~(ii) he may not enter any order under this subsection~~  
 9 ~~(f) on the basis of an order unless that order was based on~~  
 10 ~~facts which would currently constitute a ground for an order~~  
 11 ~~under this section, adjudication or determination, within~~  
 12 ~~the past 5 years, by a securities or commodities agency or~~  
 13 ~~administrator of another state or a court of competent~~  
 14 ~~jurisdiction, that the person has violated the Securities~~  
 15 ~~Act of 1933, the Securities Exchange Act of 1934, the~~  
 16 ~~Investment Advisors Act of 1940, the Investment Company Act~~  
 17 ~~of 1940, or the Commodity Exchange Act or the securities or~~  
 18 ~~commodities law of any other state;~~

19 (g) has engaged in dishonest or unethical practices in  
 20 the securities business;

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

1 insolvency as to the broker-dealer or investment adviser;

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

6 (j) has failed to pay the proper filing fee, but the  
 7 commissioner may enter only a denial order under this  
 8 subsection (j), and he shall vacate any such order when the  
 9 deficiency has been corrected; or

10 (k) has failed to reasonably supervise his salesmen or  
 11 employees, if he is a broker-dealer, or his investment  
 12 adviser representatives or employees, if he is an investment  
 13 adviser, to assure their compliance with this act.

14 (11) The commissioner may not institute a suspension  
 15 or revocation proceeding on the basis of a fact or  
 16 transaction known to him when registration became effective  
 17 unless the proceeding is instituted within 30 days after the  
 18 date on which the registration became effective.

19 (12) The commissioner may by order summarily postpone  
 20 or suspend registration pending final determination of any  
 21 proceeding under this section.

22 ~~(13)~~ (13) Upon the entry of the order under subsection  
 23 (10) of this section, the commissioner shall promptly notify  
 24 the applicant or registrant, as well as the employer or  
 25 prospective employer if the applicant or registrant is a

1 salesman, that it has been entered and of the reasons  
 2 therefor and that if requested by the applicant or  
 3 registrant within 15 days after the receipt of the  
 4 commissioner's notification the matter will be promptly set  
 5 down for hearing. If no hearing is requested within 15 days  
 6 and none is ordered by the commissioner, the order will  
 7 remain in effect until it is modified or vacated by the  
 8 commissioner. If a hearing is requested or ordered, the  
 9 commissioner, after notice of and opportunity for hearing,  
 10 may affirm, modify, or vacate the order or extend it until  
 11 final determination.

12 ~~{12}~~(14) If the commissioner finds that any registrant  
 13 or applicant for registration is no longer in existence or  
 14 has ceased to do business as a broker-dealer, investment  
 15 adviser, or salesman or is subject to an adjudication of  
 16 mental incompetence or to the control of a committee,  
 17 conservator, or guardian or cannot be located after  
 18 reasonable search, the commissioner may by order cancel the  
 19 registration or application.

20 ~~{13}~~(15) The commissioner may, after suspending or  
 21 revoking registration of any broker-dealer, salesman, or  
 22 investment adviser under subsection (10), impose a fine not  
 23 to exceed \$5,000 upon such broker-dealer, salesman, or  
 24 investment adviser. The fine is in addition to all other  
 25 penalties imposed by the laws of this state and must be

1 collected by the commissioner in the name of the state of  
 2 Montana and deposited in the general fund. Imposition of  
 3 any fine under this subsection is an order from which an  
 4 appeal may be taken pursuant to 30-10-308. If any  
 5 broker-dealer, salesman, or investment adviser fails to pay  
 6 a fine referred to in this subsection, the amount of the  
 7 fine is a lien upon all of the assets and property of such  
 8 broker-dealer, salesman, or investment adviser in this state  
 9 and may be recovered by suit by the commissioner and  
 10 deposited in the general fund. Failure of a broker-dealer,  
 11 salesman, or investment adviser to pay a fine also  
 12 constitutes a forfeiture of his right to do business in this  
 13 state under parts 1 through 3 of this chapter."

14 Section 5. Section 30-10-204, MCA, is amended to read:  
 15 "30-10-204. Registration by coordination. (1) Any  
 16 security for which a registration statement has been filed  
 17 under the Securities Act of 1933 or any securities for which  
 18 filings have been made pursuant to regulation A or  
 19 regulation E, and amendments thereto, of the general rules  
 20 and regulations of the United States securities and exchange  
 21 commission, adopted pursuant to subsection (b) of section 3  
 22 of said Securities Act of 1933, in connection with the same  
 23 offering, may be registered by coordination. A registration  
 24 statement under this section shall contain the following  
 25 information and be accompanied by the following documents,



1 in addition to payment of the registration fee prescribed in  
2 30-10-209:

3 (a) ~~three---copies~~ one copy of the prospectus or  
4 offering circular and letter of notification filed under the  
5 Securities Act of 1933 or the general rules and regulations  
6 thereunder, together with all amendments thereto;

7 (b) the amount of securities to be offered in this  
8 state;

9 (c) the states in which a registration statement or  
10 similar document in connection with the offering has been or  
11 is expected to be filed;

12 (d) any adverse order, judgment, or decree previously  
13 entered in connection with the offering by any court or the  
14 securities and exchange commission;

15 (e) if the commissioner by rule or otherwise requires,  
16 a copy of the articles of incorporation and bylaws (or their  
17 substantial equivalents) currently in effect, a copy of any  
18 agreements with or among underwriters, a copy of any  
19 indenture or other instrument governing the issuance of the  
20 security to be registered, and a specimen or copy of the  
21 security;

22 (f) if the commissioner requests, any other  
23 information, or copies of any other documents, filed under  
24 the Securities Act of 1933;

25 (g) an undertaking to forward promptly all amendments

1 to the federal registration statement or offering circular  
2 and letter of notification, other than an amendment which  
3 merely delays the effective date;

4 (h) a consent to service of process meeting the  
5 requirements of 30-10-208; and

6 (i) such other information as the commissioner may  
7 require.

8 (2) A registration statement by coordination under  
9 this section automatically becomes effective at the moment  
10 the federal registration statement or other filing becomes  
11 effective if all the following conditions are satisfied:

12 (a) no stop order is in effect and no proceeding is  
13 pending under 30-10-207;

14 (b) the registration statement has been on file with  
15 the commissioner for at least 10 business days; and

16 (c) a statement of the maximum and minimum proposed  
17 offering prices and the maximum underwriting discounts and  
18 commissions has been on file for 2 business days or such  
19 shorter period as the commissioner permits by rule or  
20 otherwise and the offering is made within those limitations.

21 (3) The registrant shall promptly notify the  
22 commissioner of the date and time when the federal  
23 registration statement or other filings became effective and  
24 the content of the price amendment, if any, and shall  
25 promptly file a posteffective amendment containing the

1 information and documents in the price amendment. "Price  
2 amendment" means the final federal amendment which includes  
3 a statement of the offering price, underwriting and selling  
4 discounts or commissions, amount of proceeds, conversion  
5 rates, call prices, and other matters dependent upon the  
6 offering price.

7 (4) Upon failure to receive the required notification  
8 and posteffective amendment with respect to the price  
9 amendment referred to in subsection (2) of this section, the  
10 commissioner may enter a stop denial order, without notice  
11 or hearing, retroactively denying effectiveness to the  
12 registration statement or suspending its effectiveness until  
13 compliance with subsection (2) of this section, if he  
14 promptly notifies the registrant of the issuance of the  
15 order. If the registrant proves compliance with the  
16 requirements as to notice and posteffective amendment, the  
17 stop denial order is void as of the time of its entry. The  
18 commissioner may by rule or otherwise waive either or both  
19 of the conditions specified in subsections (2)(b) and (2)(c)  
20 of this section. If the federal registration statement or  
21 other filing becomes effective before all these conditions  
22 are satisfied and they are not waived, the registration  
23 statement automatically becomes effective as soon as all  
24 conditions are satisfied. If the registrant advises the  
25 commissioner of the date when the federal registration

1 statement or other filing is expected to become effective  
2 the commissioner shall promptly advise the registrant  
3 whether all the conditions are satisfied and whether he then  
4 contemplates the institution of a proceeding under  
5 30-10-207; but this advice by the commissioner does not  
6 preclude the institution of such a proceeding at any time."

7 Section 6. Section 30-10-206, MCA, is amended to read:

8 "30-10-206. General provisions regarding registration  
9 of securities. (1) A registration statement may be filed by  
10 the issuer, any other person on whose behalf the offering is  
11 to be made, or a registered broker-dealer. Any document  
12 filed under parts 1 through 3 of this chapter or a  
13 predecessor law within 5 3 years preceding the filing of a  
14 registration statement may be incorporated by reference in  
15 the registration statement to the extent that the document  
16 is currently accurate. The commissioner may by rule or  
17 otherwise permit the omission of any item of information or  
18 document from any registration statement.

19 (2) (a) The commissioner may require as a condition of  
20 registration by qualification or coordination:

21 (i) that any security issued within the past 3 years  
22 or to be issued to a promoter for a consideration  
23 substantially different from the public offering price, or  
24 to any person for a consideration other than cash, be  
25 deposited in escrow; and

1 (ii) that the proceeds from the sale of the registered  
2 security in this state be impounded until the issuer  
3 receives a specified amount from the sale of the security  
4 either in this state or elsewhere.

5 (b) The commissioner may determine the conditions of  
6 any escrow or impounding required hereunder, but he may not  
7 reject a depository solely because of location in another  
8 state.

9 (3) When securities are registered by notification,  
10 coordination, or qualification, they may be offered and sold  
11 by the issuer, any other person on whose behalf they are  
12 registered, or by any registered broker-dealer. Every  
13 registration shall remain effective for a period of 1 year  
14 unless it is revoked by the commissioner, terminated upon  
15 request of the registrant with the consent of the  
16 commissioner, or renewed under 30-10-209(1)(b); however,  
17 said registration shall be automatically suspended upon a  
18 stop order or suspension proceedings being instituted by the  
19 securities and exchange commission relative to said  
20 securities and shall continue suspended so long as such  
21 proceedings are pending and until the registration or filing  
22 with the securities and exchange commission is effective.  
23 All outstanding securities of the same class as a currently  
24 registered security are considered to be registered for the  
25 purpose of any nonissuer transaction. A registration

1 statement which has become effective may not be withdrawn  
2 for 1 year from its effective date if any securities of the  
3 same class are outstanding.

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

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

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

15 (5) No securities registration statement may be  
16 withdrawn, whether or not such statement has become  
17 effective, without the express written consent of the  
18 commissioner."

19 Section 7. Section 30-10-207, MCA, is amended to read:  
20 "30-10-207. Denial, suspension, and revocation of  
21 registration of securities. (1) The commissioner may issue  
22 an order denying effectiveness to, or suspending or revoking  
23 the effectiveness of, any registration statement if he finds  
24 that the order is in the public interest and that:

25 (a) the registration statement, as of its effective

1 date or as of any earlier date in the case of an order  
 2 denying effectiveness, is incomplete in any material respect  
 3 or contains any statement which was, in the light of the  
 4 circumstances under which it was made, false or misleading  
 5 with respect to any material fact;

6 (b) any provision of parts 1 through 3 of this chapter  
 7 or any rule, order, or condition lawfully imposed under  
 8 parts 1 through 3 of this chapter has been willfully  
 9 violated, in connection with the offering, by:

10 (i) the person filing the registration statement;

11 (ii) the issuer, any partner, officer, or director of  
 12 the issuer, any person occupying a similar status or  
 13 performing similar functions, or any person directly or  
 14 indirectly controlling or controlled by the issuer, but only  
 15 if the person filing the registration statement is directly  
 16 or indirectly controlled by or acting for the issuer; or

17 (iii) any underwriter;

18 (c) the security registered or sought to be registered  
 19 is the subject of a permanent or temporary injunction of any  
 20 court of competent jurisdiction entered under any other  
 21 federal or state law applicable to the offering, but:

22 (i) the commissioner may not institute a proceeding  
 23 against an effective registration statement under this  
 24 subsection (c) more than 1 year from the date of the  
 25 injunction relied on; and

1 (ii) he may not enter an order under this subsection  
 2 (c) on the basis of an injunction entered under any other  
 3 state law unless that order or injunction was based on facts  
 4 which would currently constitute a ground for an order under  
 5 this section;

6 (d) the issuer's enterprise or method of business  
 7 includes or would include activities which are illegal where  
 8 performed;

9 (e) the offering has worked or tended to work a fraud  
 10 upon purchasers or would so operate;

11 (f) when a security is sought to be registered by  
 12 notification, it is not eligible for such registration;

13 (g) when a security is sought to be registered by  
 14 coordination, there has been a failure to comply with the  
 15 undertaking required by 30-10-204(1)(g);

16 (h) the applicant or registrant has failed to pay the  
 17 proper registration fee, but the commissioner may enter only  
 18 a denial order under this subsection, and he shall vacate  
 19 any such order when the deficiency has been corrected; or

20 (i) the offering has been or would be made with  
 21 unreasonable amounts of underwriters' and sellers'  
 22 discounts, commissions, or other compensation, or promoters'  
 23 profits or participation, or unreasonable amounts or kinds  
 24 of options.

25 (2) The commissioner may not enter a ~~stop~~ suspension

1 or revocation order against an effective registration  
2 statement on the basis of a fact or transaction known to him  
3 when the registration statement became effective.

4 (3) Upon the entry of an order under subsection (1) of  
5 this section, the commissioner shall promptly notify the  
6 issuer of the securities and the applicant or registrant  
7 that an order has been entered and of the reasons therefor  
8 and that, if requested by the issuer or registrant within 15  
9 days after the receipt of the commissioner's notification,  
10 the matter will be set promptly down for hearing. If no  
11 hearing is requested within 15 days and none is ordered by  
12 the commissioner, the order will remain in effect until it  
13 is modified or vacated by the commissioner. If a hearing is  
14 requested or ordered, the commissioner, after notice of and  
15 opportunity for hearing, may affirm, modify, or vacate the  
16 order."

17 Section 8. Section 30-10-209, MCA, is amended to read:

18 "30-10-209. Fees. The following fees shall be paid in  
19 advance under the provisions of parts 1 through 3 of this  
20 chapter:

21 (1) (a) For the registration of securities by  
22 notification, coordination, or qualification, there shall be  
23 paid to the commissioner for the first year of registration  
24 a registration fee of \$200 for the first \$100,000 of initial  
25 issue or portion thereof in this state, based on offering

1 price, plus 1/10 of 1% for any excess over \$100,000, with a  
2 maximum of \$1,000.

3 (b) Each year thereafter, a registration of securities  
4 may be renewed, prior to its termination date, for an  
5 additional year upon consent of the commissioner and payment  
6 of an additional registration fee to be computed at 1/10 of  
7 1% of the aggregate offering price of such securities which  
8 are to be offered in this state during that year, even  
9 though the maximum fee was paid the preceding year. In no  
10 event shall the additional registration fee be less than  
11 \$200 or more than \$1,000. The registration statement for  
12 such securities may be amended to increase the amount of  
13 securities to be offered.

14 (c) If a registrant sells securities in excess of the  
15 aggregate amount registered for sale in this state, the  
16 registrant may file an amendment to the registration  
17 statement to include the excess sales. If the registrant  
18 fails to file an amendment before the expiration date of the  
19 registration order, he shall pay a filing fee for the excess  
20 sales of three times the amount calculated in the manner  
21 specified in subsection (1)(b). Registration of the excess  
22 securities is effective retroactively to the date of the  
23 existing registration.

24 (2) (a) For registration of a broker-dealer or  
25 investment adviser, the fee shall be \$200 for original

1 registration and \$200 for each annual renewal.

2 (b) For registration of a salesman, the fee shall be  
3 \$50 for original registration with each employer, \$50 for  
4 each annual renewal, and \$50 for each transfer.

5 (3) For certified copies of any documents filed with  
6 the commissioner, the fee shall be the cost to the  
7 department.

8 (4) For a request for an exemption under  
9 30-10-105(15), the fee shall be established by the  
10 commissioner by rule. For a request for any other exemption  
11 or an exception to the provisions of parts 1 through 3 of  
12 this chapter, the fee shall be \$50.

13 ~~(5) For waiver of the residency requirement of~~  
14 ~~30-10-201(4), the fee shall be \$50 for each original~~  
15 ~~registration.~~

16 ~~(6)(5)~~ All fees are considered fully earned when  
17 received. In the event of overpayment, only those amounts in  
18 excess of \$10 may be refunded.

19 ~~(7)(6)~~ All fees, examination charges, and  
20 miscellaneous charges, except fines or penalties, collected  
21 by the commissioner pursuant to parts 1 through 3 of this  
22 chapter and the rules adopted hereunder must be deposited  
23 into the securities regulatory trust account, pursuant to  
24 30-10-115 through 30-10-118.

25 ~~(8)(7)~~ All fines and penalties collected by the

1 commissioner pursuant to parts 1 through 3 of this chapter  
2 and the rules adopted hereunder must be deposited into the  
3 general fund."

4 Section 9. Section 30-10-301, MCA, is amended to read:  
5 "30-10-301. Fraudulent and other prohibited practices.

6 (1) It is unlawful for any person, in connection with the  
7 offer, sale, or purchase of any security, directly or  
8 indirectly, in, into, or from this state, to:

9 (a) employ any device, scheme, or artifice to defraud;

10 (b) make any untrue statement of a material fact or  
11 omit to state a material fact necessary in order to make the  
12 statements made, in the light of the circumstances under  
13 which they are made, not misleading; or

14 (c) engage in any act, practice, or course of business  
15 which operates or would operate as a fraud or deceit upon  
16 any person.

17 (2) (a) It is unlawful for any person who receives,  
18 directly or indirectly, any consideration from another  
19 person primarily for advising the other person as to the  
20 value of securities or their purchase or sale, whether  
21 through the issuance of analysis or reports or otherwise,  
22 to:

23 ~~(a)(i)~~ to employ any device, scheme, or artifice to  
24 defraud the other person; or

25 ~~(b)(ii)~~ to engage in any act, practice, or course of

1 business which operates or would operate as a fraud or  
2 deceit upon the other person; or

3 (iii) without disclosing to the client in writing  
4 before the completion of the transaction the capacity in  
5 which he is acting and obtaining the consent of the client  
6 to the transaction;

7 (A) acting as principal for his own account, to  
8 knowingly sell any security to or purchase any security from  
9 a client; or

10 (B) acting as agent for a person other than such  
11 client, to knowingly effect the sale or purchase of any  
12 security for the account of such client.

13 (b) The prohibitions of subsection (2)(a)(iii) do not  
14 apply to any transaction with a customer of a broker-dealer  
15 if the broker-dealer is not being compensated for rendering  
16 investment advice in relation to such transaction.

17 (3) In the solicitation of advisory clients, it is  
18 unlawful for a person to:

19 (a) make a false statement of a material fact; or

20 (b) omit a material fact necessary to make a statement  
21 not misleading in light of the circumstances under which it  
22 is made.

23 (3)(4) Except as permitted by rule or order of the  
24 commissioner, it is unlawful for any investment adviser to  
25 enter into, extend, or renew any investment advisory

1 contract unless it provides in writing that:

2 (a) the investment adviser shall not be compensated on  
3 the basis of a share of capital gains upon or capital  
4 appreciation of the funds or any portion of the funds of the  
5 client;

6 (b) no assignment of the contract may be made by the  
7 investment adviser without the consent of the other party to  
8 the contract; and

9 (c) the investment adviser, if a partnership, shall  
10 notify the other party to the contract of any change in the  
11 membership of the partnership within a reasonable time after  
12 the change.

13 (5) Subsection (4)(a) does not prohibit an investment  
14 advisory contract which provides for compensation based upon  
15 the total value of a fund averaged over a definite period or  
16 as of definite dates or taken as of a definite date.  
17 "Assignment", as used in subsection (4)(b), includes any  
18 direct or indirect transfer or hypothecation of an  
19 investment advisory contract by the assignor or of a  
20 controlling block of the assignor's outstanding voting  
21 securities by a security holder of the assignor; but if the  
22 investment adviser is a partnership, no assignment of an  
23 investment advisory contract is considered to result from  
24 the death or withdrawal of a minority of the members of the  
25 investment adviser having only a minority interest in the

1 business of the investment adviser or from the admission to  
 2 the investment adviser of one or more members who, after  
 3 admission, will be only a minority of the members and will  
 4 have only a minority interest in the business.

5 (6) It is unlawful for an investment adviser to take  
 6 or have custody of any securities or funds of any client if:

7 (a) the commissioner by rule prohibits such custody;  
 8 or

9 (b) in the absence of rule, the investment adviser  
 10 fails to notify the commissioner that he has or may have  
 11 such custody."

12 Section 10. Section 30-10-304, MCA, is amended to  
 13 read:

14 "30-10-304. Investigations and subpoenas. (1) The  
 15 commissioner in his discretion may:

16 (a) make such public or private investigations or  
 17 examinations within or without this state as he deems  
 18 necessary to determine whether any registration should be  
 19 granted, denied, or revoked or whether any person has  
 20 violated or is about to violate any provision of parts 1  
 21 through 3 of this chapter or any rule or order hereunder or  
 22 to aid in the enforcement of parts 1 through 3 of this  
 23 chapter or in the prescribing of rules and forms hereunder;

24 (b) require or permit any person to file a statement  
 25 in writing, under oath or otherwise as the commissioner may

1 determine, as to all the facts and circumstances concerning  
 2 the matter to be investigated; and

3 (c) publish information concerning any violation of  
 4 parts 1 through 3 of this chapter or any rule or order  
 5 hereunder.

6 (2) (a) For the purpose of any investigation or  
 7 proceeding under parts 1 through 3 of this chapter, the  
 8 commissioner or any officer designated by him may administer  
 9 oaths and affirmations, subpoena witnesses, compel their  
 10 attendance, take evidence, and require the production of any  
 11 books, papers, correspondence, memoranda, agreements, or  
 12 other documents or records which the commissioner deems  
 13 relevant or material to the inquiry.

14 (b) The commissioner may issue and apply to enforce  
 15 subpoenas in this state at the request of a securities  
 16 agency or administrator of another state if the activities  
 17 constituting an alleged violation for which the information  
 18 is sought would be a violation of the Securities Act of  
 19 Montana if the activities had occurred in this state.

20 (3) In case of contumacy by or refusal to obey a  
 21 subpoena issued to any person, any court of competent  
 22 jurisdiction, upon application by the commissioner, may  
 23 issue to that person an order requiring him to appear before  
 24 the commissioner or the officer designated by him, there to  
 25 produce documentary evidence if so ordered or to give



1 evidence touching the matter under investigation or in  
2 question. Any failure to obey the order of the court may be  
3 punished by the court as a contempt of court.

4 (4) No person is excused from attending and testifying  
5 or from producing any document or record before the  
6 commissioner or in obedience to the subpoena of the  
7 commissioner or any officer designated by him, or in any  
8 proceeding instituted by the commissioner, on the ground  
9 that the testimony or evidence (documentary or otherwise)  
10 required of him may tend to incriminate him or subject him  
11 to a penalty or forfeiture; but no compelled testimony or  
12 evidence or any information directly or indirectly derived  
13 from such testimony or evidence may be used against the  
14 witness in any criminal case. Nothing in this section  
15 prohibits the commissioner from granting immunity from  
16 prosecution for or on account of any transaction, matter, or  
17 thing concerning which a witness is compelled to testify if  
18 the commissioner determines, in his sole discretion, that  
19 the ends of justice would be served thereby. Immunity may  
20 not extend to prosecution or punishment for false statements  
21 given pursuant to the subpoena."

22 Section 11. Section 30-10-307, MCA, is amended to  
23 read:

24 "30-10-307. Civil liabilities. (1) Any person who  
25 offers or sells a security in violation of ~~any provisions~~ of

1 30-10-202 ~~through 30-10-205~~ or offers or sells a security by  
2 means of fraud or misrepresentation is liable to the person  
3 buying the security from him, who may sue either at law or  
4 in equity to recover the consideration paid for the  
5 security, together with interest at 10% per annum from the  
6 date of payment, costs, and reasonable attorneys' fees, less  
7 the amount of any income received on the security, upon the  
8 tender of the security, or for damages if he no longer owns  
9 the security. Damages are the amount that would be  
10 recoverable upon a tender less:

11 (a) the value of the security when the buyer disposed  
12 of it; and

13 (b) interest at 10% per annum from the date of  
14 disposition.

15 (2) Every person who directly or indirectly controls a  
16 seller liable under subsection (1), every partner, officer,  
17 or director (or person occupying a similar status or  
18 performing similar functions) or employee of such a seller,  
19 and every broker-dealer or salesman who participates or  
20 materially aids in the sale is liable jointly and severally  
21 with and to the same extent as the seller if the nonseller  
22 knew, or in the exercise of reasonable care could have  
23 known, of the existence of the facts by reason of which the  
24 liability is alleged to exist. There shall be contribution  
25 among the several persons so liable.

1 (3) Any tender specified in this section may be made  
2 at any time before entry of judgment. A cause of action  
3 under this statute survives the death of any person who  
4 might have been a plaintiff or a defendant. No person may  
5 sue under this section:

6 (a) if the buyer has received a written offer, at a  
7 time when he owned the security, to refund the consideration  
8 paid, together with interest at 10% per annum from the date  
9 of payment, less the amount of any income received on the  
10 security and he failed to accept the offer within 30 days of  
11 its receipt; or

12 (b) if the buyer has received a written offer at a  
13 time when he did not own the security in the amount that  
14 would be recoverable under subsection (1) upon a tender  
15 less:

16 (i) the value of the security when the buyer disposed  
17 of it; and

18 (ii) interest at 10% per annum from the date of  
19 disposition.

20 (4) No person who has made or engaged in the  
21 performance of any contract in violation of any provision of  
22 parts 1 through 3 of this chapter or any rule or order  
23 hereunder or who has acquired any purported right under any  
24 such contract with knowledge of the facts by reason of which  
25 its making or performance was in violation may base any suit

1 on the contract. Any condition, stipulation, or provision  
2 binding any person acquiring any security to waive  
3 compliance with any provision of parts 1 through 3 of this  
4 chapter or any rule or order hereunder is void as against  
5 public policy and in the public interest."

6 Section 12. Section 90-8-304, MCA, is amended to read:

7 "90-8-304. Application of securities law. In lieu of  
8 registration under Title 30, chapter 10, a certified Montana  
9 capital company may file all disclosure documents, along  
10 with a consent to service of process, with the state  
11 securities commissioner. The commissioner may not charge a  
12 fee for such filing ~~or deposit.~~"

13 NEW SECTION. Section 13. Coordination instruction. If  
14 Bill No. [LC 1053] is not passed and approved, section 4  
15 of this act, amending 30-10-201, is amended so that  
16 30-10-201(5) and (6) read as follows:

17 "(5) The application shall contain whatever  
18 information the commissioner requires. No registration  
19 application of a broker-dealer, salesman, or investment  
20 adviser may be withdrawn before the commissioner approves or  
21 denies such registration, without the express written  
22 consent of the commissioner.

23 (6) When the registration requirements are ~~complied~~  
24 ~~with met~~, the commissioner shall ~~approve--the--registration--~~  
25 ~~make the registration effective. No effective registration~~

1 of a broker-dealer, salesman, or investment adviser may be  
2 withdrawn without the express written consent of the  
3 commissioner."

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

8 NEW SECTION. Section 15. Effective date. This act is  
9 effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB247, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to securities; amending Sections 30-10-103 through 3-10-105, 30-10-201, 30-10-204, 30-10-206, 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307 and 90-8-304, MCA; and providing an immediate effective date.

ASSUMPTIONS:

1. The number of new non-resident issuer appointed salesman will remain constant during biennium -52.
2. No significant impact on workload.

FISCAL IMPACT:Revenues:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Securities Regulatory Account	\$1,987,700	\$1,985,100	(\$ 2,600)	\$1,987,700	\$1,985,100	(\$ 2,600)

David L. Hunter DATE 2/4/87

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

Meyer DATE 2/6/87

DARRYL MEYER, PRIMARY SPONSOR

Fiscal Note for SB247, as introduced.

**SB 247**

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

1                   SENATE BILL NO. 247  
2                   INTRODUCED BY MEYER, BRANDEWIE, MILLER  
3                   BY REQUEST OF THE STATE AUDITOR AND  
4                   SECURITIES COMMISSIONER  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103  
8 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206,  
9 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND  
10 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
11

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

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

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

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

1           (a) effecting a transaction in a security exempted by  
2 subsections (1), (2), (3), (8), (9), (10), or (11)~~or (12)~~  
3 of 30-10-104;

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

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

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

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

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



1 (5) "Guaranteed" means guaranteed as to payment of  
2 principal, interest, or dividends.

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

10 (b) The term includes a financial planner or other  
11 person who:

12 (i) as an integral component of other financially  
13 related services, provides the investment advisory services  
14 described in subsection (6)(a) to others for compensation,  
15 as part of a business; or

16 (ii) represents himself as providing the investment  
17 advisory services described in subsection (6)(a) to others  
18 for compensation.

19 (c) "Investment adviser" does not include:

20 (a)(i) a bank, savings institution, trust company, or  
21 insurance company;

22 (b)(ii) a lawyer, accountant, engineer, or teacher  
23 whose performance of these services is solely incidental to  
24 the practice of his profession;

25 (c)(iii) a broker-dealer;

1 (d)(iv) a publisher of any bona-fide newspaper, news  
2 column, newsletter, news magazine, or business or financial  
3 publication of--general,--regular,--and-paid-circulation or  
4 service, whether communicated in hard copy form or by  
5 electronic means or otherwise, that does not consist of the  
6 rendering of advice on the basis of the specific investment  
7 situation of each client;

8 (e)(v) a person whose advice, analyses, or reports  
9 relate only to securities exempted by 30-10-104(1); or

10 (f)--a-person-who-has-no-place-of-business-in-this  
11 state-if-his-only-clients-in-this-state-are-other-investment  
12 advisers,--broker-dealers,--banks,--savings-institutions,--trust  
13 companies,--insurance-companies,--investment-companies--as  
14 defined-in-the-Investment-Company-Act-of--1940,--pension--or  
15 profit-sharing--trusts,--or--other-financial-institutions-or  
16 institutional-buyers,--whether-acting-for--themselves--or--as  
17 trustees;--or

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

21 (7) "Issuer" means any person who issues or proposes  
22 to issue any security, except that with respect to  
23 certificates of deposit, voting-trust certificates, or  
24 collateral-trust certificates or with respect to  
25 certificates of interest or shares in an unincorporated

1 investment trust not having a board of directors (or persons  
2 performing similar functions) or of the fixed, restricted  
3 management, or unit type, the term "issuer" means the person  
4 or persons performing the acts and assuming the duties of  
5 depositor or manager pursuant to the provisions of the trust  
6 or other agreement or instrument under which the security is  
7 issued.

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

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

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

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

22 (c) Any security given or delivered with or as a bonus  
23 on account of any purchase of securities or any other thing  
24 is considered to constitute part of the subject of the  
25 purchase and to have been offered and sold for value. A

1 purported gift of assessable stock is considered to involve  
2 an offer and sale. Every sale or offer of a warrant or right  
3 to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security  
5 which gives the holder a present or future right or  
6 privilege to convert into another security of the same or  
7 another issuer, is considered to include an offer of the  
8 other security.

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

14 (12) "Security" means any note; stock; treasury stock;  
15 bond; debenture; evidence of indebtedness; certificate of  
16 interest or participation in any profit-sharing agreement;  
17 collateral-trust certificate; preorganization certificate or  
18 subscription; transferable shares; investment contract;  
19 voting-trust certificate; certificate of deposit for a  
20 security; certificate of interest or participation in an  
21 oil, gas, or mining title or lease or in payments out of  
22 production under such a title or lease; or, in general, any  
23 interest or instrument commonly known as a security or any  
24 certificate of interest or participation in, temporary or  
25 interim certificate for, receipt for, guarantee of, or

1 warrant or right to subscribe to or purchase any of the  
 2 foregoing. "Security" does not include any insurance or  
 3 endowment policy or annuity contract under which an  
 4 insurance company promises to pay a sum of money either in a  
 5 lump sum or periodically for life or some other specified  
 6 period.

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

10 (14) "Transact", "transact business", or "transaction"  
 11 includes the meanings of the terms "sale", "sell", and  
 12 "offer".

13 Section 2. Section 30-10-104, MCA, is amended to read:

14 "30-10-104. Exempt securities. Sections 30-10-202  
 15 through 30-10-207 do not apply to any of the following  
 16 securities:

17 (1) any security (including a revenue obligation)  
 18 issued or guaranteed by the United States, any state, any  
 19 political subdivision of a state, or any agency or corporate  
 20 or other instrumentality of one or more of the foregoing;  
 21 provided, however, 30-10-202 through 30-10-207 apply to a  
 22 security issued by any of the foregoing that is payable  
 23 solely from payments to be received in respect of property  
 24 or money used under a lease, sale, or loan arrangement by or  
 25 for a nongovernmental industrial or commercial enterprise,

1 unless such enterprise or any security of which it is the  
 2 issuer is within any of the exemptions enumerated in  
 3 subsections (2) through ~~(9)~~ (13) of this section;

4 (2) any security issued or guaranteed by Canada, any  
 5 Canadian province, any political subdivision of any such  
 6 province, or any agency or corporate or other  
 7 instrumentality of one or more of the foregoing or any other  
 8 foreign government with which the United States currently  
 9 maintains diplomatic relations if the security is recognized  
 10 as a valid obligation by the issuer or guarantor;

11 (3) any security issued by and representing an  
 12 interest in or a debt of or guaranteed by any bank organized  
 13 under the laws of the United States or any bank, savings  
 14 institution, or trust company organized and supervised under  
 15 the laws of any state;

16 (4) any security issued by and representing an  
 17 interest in or a debt of or guaranteed by any federal  
 18 savings and loan association or any building and loan or  
 19 similar association organized under the laws of any state  
 20 and authorized to do business in this state;

21 ~~(5) any insurance or endowment policy or annuity~~  
 22 ~~contract or optional annuity contract issued by a~~  
 23 ~~corporation subject to the supervision of the insurance~~  
 24 ~~commissioner;~~

25 (6)(5) any security issued or guaranteed by any



1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~f7~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~f8~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

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

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

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~f8~~(d) (7)(d), means the

1 most recent year for which audited financial statements are  
 2 available, provided that such statements cover a fiscal  
 3 period ended not more than 15 months from the commencement  
 4 of the offering.

5 (e) if the offering is of stock or shares, other than  
 6 preferred stock or shares, such securities have voting  
 7 rights and such rights include the right to have at least as  
 8 many votes per share and the right to vote on at least as  
 9 many general corporate decisions as each of the issuer's  
 10 outstanding classes of stock or shares, except as otherwise  
 11 required by law;

12 (f) if the offering is of stock or shares, other than  
 13 preferred stock or shares, such securities are owned  
 14 beneficially or of record on any date within 6 months prior  
 15 to the commencement of the offering by at least 1,200  
 16 persons and on such date there are at least 750,000 such  
 17 shares outstanding with an aggregate market value, based on  
 18 the average bid price for that day, of at least \$3,750,000.  
 19 In connection with the determination of the number of  
 20 persons who are beneficial owners of the stock or shares of  
 21 an issuer, the issuer or broker-dealer may rely in good  
 22 faith for the purposes of this section upon written  
 23 information furnished by the record owners.

24 ~~(9)~~(8) any security issued by any person organized and  
 25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
 2 social, athletic, or reformatory purposes if the issuer pays  
 3 a fee of \$50 and files with the commissioner 20 days prior  
 4 to the offering a written notice specifying the terms of the  
 5 offer and the commissioner does not disallow the exemption  
 6 in writing within such 20-day period;

7 ~~(10)~~(9) any commercial paper which arises out of a  
 8 current transaction or the proceeds of which have been or  
 9 are to be used for current transaction and which evidences  
 10 an obligation to pay cash within 9 months of the date of  
 11 issuance, exclusive of days of grace, or any renewal of such  
 12 paper which is likewise limited or any guarantee of such  
 13 paper or of any such renewal, when such commercial paper is  
 14 sold to the banks or insurance companies;

15 ~~(11)~~(10) any investment contract issued in connection  
 16 with an employee's stock purchase, savings, pension,  
 17 profit-sharing, or similar benefit plan;

18 ~~(12)~~(11) any security for which the commissioner  
 19 determines by order that an exemption would better serve the  
 20 purposes of 30-10-102 than would registration. The fee for  
 21 this exemption must be as prescribed in 30-10-209(4).

22 ~~(13)~~(12) any security listed or approved for listing  
 23 upon notice of issuance on the New York stock exchange, the  
 24 American stock exchange, the Pacific stock exchange, the  
 25 Midwest stock exchange, or any other stock exchange

1 registered with the federal securities and exchange  
 2 commission and approved by the commissioner; any other  
 3 security of the same issuer that is of senior or  
 4 substantially equal rank; any security called for by  
 5 subscription rights or warrants so listed or approved; or  
 6 any warrant or right to purchase or subscribe to any of the  
 7 foregoing;

8 ~~(14)~~(13) any national market system security listed or  
 9 approved for listing upon notice of issuance on the national  
 10 association of securities dealers automated quotation system  
 11 or any other national quotation system approved by the  
 12 commissioner; any other security of the same issuer that is  
 13 of senior or substantially equal rank; any security called  
 14 for by subscription rights or warrants so listed or  
 15 approved; or any warrant or right to purchase or subscribe  
 16 to any of the securities listed in this subsection."

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

18 "30-10-105. Exempt transactions. Except as in this  
 19 section expressly provided, 30-10-201 through 30-10-207  
 20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
 22 effected through a broker-dealer or not; A transaction is  
 23 presumed to be isolated if it is one of not more than three  
 24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
 2 if:

3 (i) quotations for the securities to be offered or  
 4 sold (or the securities issuable upon exercise of any  
 5 warrant or right to purchase or subscribe to such  
 6 securities) are reported by the automated quotations system  
 7 operated by the national association of securities dealers,  
 8 inc., (NASDAQ) or by any other quotation system approved by  
 9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
 11 interest or dividend provision and there has been no default  
 12 during the current fiscal year or within the 3 preceding  
 13 fiscal years, or during the existence of the issuer and any  
 14 predecessors if less than 3 years, in the payment of  
 15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
 17 exemption specified in subsection (2)(a) with respect to a  
 18 specific security. Upon the entry of such an order, the  
 19 commissioner shall promptly notify all registered  
 20 broker-dealers that it has been entered and of the reasons  
 21 therefor and that within 15 days of the receipt of a written  
 22 request the matter will be set down for hearing. If no  
 23 hearing is requested and none is ordered by the  
 24 commissioner, the order will remain in effect until it is  
 25 modified or vacated by the commissioner. If a hearing is

1 requested or ordered, the commissioner, after notice of and  
 2 opportunity for hearing to all interested persons, may  
 3 modify or vacate the order or extend it until final  
 4 determination. No order under this subsection may operate  
 5 retroactively. No person may be considered to have violated  
 6 parts 1 through 3 of this chapter by reason of any offer or  
 7 sale effected after the entry of an order under this  
 8 subsection if he sustains the burden of proof that he did  
 9 not know and in the exercise of reasonable care could not  
 10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
 12 registered broker-dealer pursuant to an unsolicited order or  
 13 offer to buy, but the commissioner may require that the  
 14 customer acknowledge upon a specified form that the sale was  
 15 unsolicited and that a signed copy of each form be preserved  
 16 by the broker-dealer for a specified period;

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

20 (5) any transaction by an executor, administrator,  
 21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 22 or conservator in the performance of his official duties as  
 23 such;

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

1 chapter;

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

9 (8) (a) any transaction pursuant to an offer made in  
 10 this state directed by the offeror to not more than 10  
 11 persons (other than those designated in subsection (7))  
 12 during any period of 12 consecutive months, if:

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

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

22 (b) For the purpose of the exemption provided for in  
 23 subsection (8)(a), an offer to sell is made in this state,  
 24 whether or not the offeror or any of the offerees is then  
 25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
 2 received at the place to which it is directed (or at any  
 3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
 5 or subscription if:

6 (a) no commission or other remuneration is paid or  
 7 given directly or indirectly for soliciting any prospective  
 8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
 12 security holders of the issuer, including persons who at the  
 13 time of the transaction are holders of convertible  
 14 securities, nontransferable warrants, or transferable  
 15 warrants exercisable within not more than 90 days of their  
 16 issuance, if:

17 (a) no commission or other remuneration (other than a  
 18 standby commission) is paid or given directly or indirectly  
 19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
 21 terms of the offer and the commissioner does not by order  
 22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
 24 registration statements have been filed under both parts 1  
 25 through 3 of this chapter and the Securities Act of 1933 if

1 no ~~stop-order--or~~ STOP, refusal, denial, suspension, or  
 2 revocation order is in effect and no public proceeding or  
 3 examination looking toward such an order is pending under  
 4 either law;

5 (12) any offer (but not a sale) of a security for which  
 6 a registration statement has been filed under parts 1  
 7 through 3 of this chapter and the commissioner in his  
 8 discretion does not disallow the offer in writing within 10  
 9 days of such filing;

10 (13) the issuance of any stock dividend, whether the  
 11 corporation distributing the dividend is the issuer of the  
 12 stock or not, if nothing of value is given by stockholders  
 13 for the distribution other than the surrender of a right to  
 14 a cash dividend where the stockholder can elect to take a  
 15 dividend in cash or stock;

16 (14) any transaction incident to a right of conversion  
 17 or a statutory or judicially approved reclassification,  
 18 recapitalization, reorganization, quasi-reorganization,  
 19 stock split, reverse stock split, merger, consolidation, or  
 20 sale of assets;

21 (15) any transaction in compliance with such rules as  
 22 the commissioner in his discretion may adopt to serve the  
 23 purposes of 30-10-102, ~~--or.~~ The commissioner may in his  
 24 discretion require that 30-10-201 through 30-10-207 apply to  
 25 any or all transactional exemptions adopted by rule.

1 (16) any transaction pursuant to the Montana Capital  
 2 Company Act, Title 90, chapter 8, provided that a Montana  
 3 capital company must by a certified Montana capital company  
 4 as defined in 90-8-104, provided that such company first  
 5 file files all disclosure documents, along with a consent to  
 6 service of process, with the state securities commissioner.  
 7 The commissioner may not charge a fee for the filing or  
 8 deposit."

9 Section 4. Section 30-10-201, MCA, is amended to read:  
 10 "30-10-201. Registration of broker-dealers, salesmen,  
 11 and investment advisers. (1) It is unlawful for any person  
 12 to transact business in this state as a broker-dealer or  
 13 salesman, except in transactions exempt under 30-10-105,  
 14 unless he is registered under parts 1 through 3 of this  
 15 chapter.

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

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

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

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

1 (c) his only clients in this state are:  
 2 (i) investment companies, as defined in the Investment  
 3 Company Act of 1940, or insurance companies;  
 4 (ii) other investment advisers;  
 5 (iii) broker-dealers;  
 6 (iv) banks;  
 7 (v) trust companies;  
 8 (vi) savings and loan associations;  
 9 (vii) employee benefit plans with assets of not less  
 10 than \$1 million;  
 11 (viii) governmental agencies or instrumentalities,  
 12 whether acting for themselves or as trustees with investment  
 13 control; or  
 14 (ix) other institutional investors as are designated by  
 15 rule or order of the commissioner.

16 (4) A broker-dealer or a salesman, acting as an agent  
 17 for an issuer or as an agent for a broker-dealer in the  
 18 offer or sale of securities for an issuer, or an investment  
 19 adviser may apply for registration by filing an application  
 20 in such form as the commissioner prescribes and payment of  
 21 the fee prescribed in 30-10-209. Except for persons in the  
 22 employ of brokerage firms governed by the regulations of the  
 23 securities and exchange commission, all salesmen must be  
 24 legal residents of this state and must have actually resided  
 25 in this state for a period of at least 1 year next prior to

1 ~~the date of application for registration. The commissioner~~  
 2 ~~may, upon request and for good cause shown by an applicant,~~  
 3 ~~waive the residency requirement. Payment of the waiver fee~~  
 4 ~~shall be as prescribed in 30-10-209.~~ A salesman acting as  
 5 agent for an issuer or broker-dealer who is not currently in  
 6 compliance with the financial responsibility requirements  
 7 prescribed by the Securities Exchange Act of 1934 and by  
 8 regulations adopted under it, may, in the discretion of the  
 9 commissioner, be required to file with the commissioner a  
 10 bond of a surety company duly authorized to transact  
 11 business in this state. The bond shall be in an amount  
 12 determined by the commissioner, payable to the state of  
 13 Montana and conditioned upon the faithful compliance with  
 14 the provisions of parts 1 through 3 of this chapter, and  
 15 provide that upon failure to so comply, the salesman shall  
 16 be liable to any and all persons who may suffer loss by  
 17 reason thereof.

18 (5) The application shall contain whatever information  
 19 the commissioner requires. No registration application of a  
 20 broker-dealer, salesman, investment adviser, or investment  
 21 adviser representative may be withdrawn before the  
 22 commissioner approves or denies such registration, without  
 23 the express written consent of the commissioner.

24 (6) When the registration requirements are complied  
 25 with met, the commissioner shall ~~approve the registration~~

1 make the registration effective. No effective registration  
 2 of a broker-dealer, salesman, investment adviser, or  
 3 investment adviser representative may be withdrawn without  
 4 the express written consent of the commissioner.

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

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

1 registered broker-dealer or investment adviser may file an  
 2 application for registration of a successor, to become  
 3 effective upon approval of the commissioner.

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

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

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

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

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

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

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

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

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 the substantial equivalent of those~~  
 24 ~~terms as defined in parts 1 through 3 of this chapter or is~~  
 25 ~~the subject of an order of the federal securities and~~



1 exchange-commission--suspending--or--expelling--him--from--a  
 2 national---securities---exchange---or---national--securities  
 3 association-registered-under-the-Securities-Exchange-Act--of  
 4 1934--or-is-the-subject-of-a-United-States-post-office-fraud  
 5 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; adjudication or determination, within~~  
 13 ~~the past 5 years, by a securities or commodities agency or~~  
 14 ~~administrator of another state or a court of competent~~  
 15 ~~jurisdiction, that the person has violated the Securities~~  
 16 ~~Act of 1933, the Securities Exchange Act of 1934, the~~  
 17 ~~Investment Advisors Act of 1940, the Investment Company Act~~  
 18 ~~of 1940, or the Commodity Exchange Act or the securities or~~  
 19 ~~commodities law of any other state;~~

20 (g) has engaged in dishonest or unethical practices in  
 21 the securities business;

22 (h) is insolvent, either in the sense that his  
 23 liabilities exceed his assets or in the sense that he cannot  
 24 meet his obligations as they mature, but the commissioner  
 25 may not enter an order against a broker-dealer or investment

1 adviser under this subsection (h) without a finding of  
 2 insolvency as to the broker-dealer or investment adviser;

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

7 (j) has failed to pay the proper filing fee, but the  
 8 commissioner may enter only a denial order under this  
 9 subsection (j), and he shall vacate any such order when the  
 10 deficiency has been corrected; or

11 (k) has failed to reasonably supervise his salesmen or  
 12 employees, if he is a broker-dealer, or his investment  
 13 adviser representatives or employees, if he is an investment  
 14 adviser, to assure their compliance with this act.

15 (11) The commissioner may not institute a suspension or  
 16 revocation proceeding on the basis of a fact or transaction  
 17 known to him when registration became effective unless the  
 18 proceeding is instituted within 30 days after the date on  
 19 which the registration became effective.

20 (12) The commissioner may by order summarily postpone  
 21 or suspend registration pending final determination of any  
 22 proceeding under this section.

23 ~~(11)~~(13) Upon the entry of the order under subsection  
 24 (10) of this section, the commissioner shall promptly notify  
 25 the applicant or registrant, as well as the employer or

1 prospective employer if the applicant or registrant is a  
 2 salesman, that it has been entered and of the reasons  
 3 therefor and that if requested by the applicant or  
 4 registrant within 15 days after the receipt of the  
 5 commissioner's notification the matter will be promptly set  
 6 down for hearing. If no hearing is requested within 15 days  
 7 and none is ordered by the commissioner, the order will  
 8 remain in effect until it is modified or vacated by the  
 9 commissioner. If a hearing is requested or ordered, the  
 10 commissioner, after notice of and opportunity for hearing,  
 11 may ~~affirm~~, modify, or vacate the order or extend it until  
 12 final determination.

13 ~~{12}~~(14) If the commissioner finds that any registrant  
 14 or applicant for registration is no longer in existence or  
 15 has ceased to do business as a broker-dealer, investment  
 16 adviser, or salesman or is subject to an adjudication of  
 17 mental incompetence or to the control of a committee,  
 18 conservator, or guardian or cannot be located after  
 19 reasonable search, the commissioner may by order cancel the  
 20 registration or application.

21 ~~{13}~~(15) The commissioner may, after suspending or  
 22 revoking registration of any broker-dealer, salesman, or  
 23 investment adviser under subsection (10), impose a fine not  
 24 to exceed \$5,000 upon such broker-dealer, salesman, or  
 25 investment adviser. The fine is in addition to all other

1 penalties imposed by the laws of this state and must be  
 2 collected by the commissioner in the name of the state of  
 3 Montana and deposited in the general fund. Imposition of  
 4 any fine under this subsection is an order from which an  
 5 appeal may be taken pursuant to 30-10-308. If any  
 6 broker-dealer, salesman, or investment adviser fails to pay  
 7 a fine referred to in this subsection, the amount of the  
 8 fine is a lien upon all of the assets and property of such  
 9 broker-dealer, salesman, or investment adviser in this state  
 10 and may be recovered by suit by the commissioner and  
 11 deposited in the general fund. Failure of a broker-dealer,  
 12 salesman, or investment adviser to pay a fine also  
 13 constitutes a forfeiture of his right to do business in this  
 14 state under parts 1 through 3 of this chapter."

15 Section 5. Section 30-10-204, MCA, is amended to read:

16 "30-10-204. Registration by coordination. (1) Any  
 17 security for which a registration statement has been filed  
 18 under the Securities Act of 1933 or any securities for which  
 19 filings have been made pursuant to regulation A or  
 20 regulation E, and amendments thereto, of the general rules  
 21 and regulations of the United States securities and exchange  
 22 commission, adopted pursuant to subsection (b) of section 3  
 23 of said Securities Act of 1933, in connection with the same  
 24 offering, may be registered by coordination. A registration  
 25 statement under this section shall contain the following

1 information and be accompanied by the following documents,  
 2 in addition to payment of the registration fee prescribed in  
 3 30-10-209:

4 (a) ~~three--copies~~ one copy of the prospectus or  
 5 offering circular and letter of notification filed under the  
 6 Securities Act of 1933 or the general rules and regulations  
 7 thereunder, together with all amendments thereto;

8 (b) the amount of securities to be offered in this  
 9 state;

10 (c) the states in which a registration statement or  
 11 similar document in connection with the offering has been or  
 12 is expected to be filed;

13 (d) any adverse order, judgment, or decree previously  
 14 entered in connection with the offering by any court or the  
 15 securities and exchange commission;

16 (e) if the commissioner by rule or otherwise requires,  
 17 a copy of the articles of incorporation and bylaws (or their  
 18 substantial equivalents) currently in effect, a copy of any  
 19 agreements with or among underwriters, a copy of any  
 20 indenture or other instrument governing the issuance of the  
 21 security to be registered, and a specimen or copy of the  
 22 security;

23 (f) if the commissioner requests, any other  
 24 information, or copies of any other documents, filed under  
 25 the Securities Act of 1933;

1 (g) an undertaking to forward promptly all amendments  
 2 to the federal registration statement or offering circular  
 3 and letter of notification, other than an amendment which  
 4 merely delays the effective date;

5 (h) a consent to service of process meeting the  
 6 requirements of 30-10-208; and

7 (i) such other information as the commissioner may  
 8 require.

9 (2) A registration statement by coordination under  
 10 this section automatically becomes effective at the moment  
 11 the federal registration statement or other filing becomes  
 12 effective if all the following conditions are satisfied:

13 (a) no stop order is in effect and no proceeding is  
 14 pending under 30-10-207;

15 (b) the registration statement has been on file with  
 16 the commissioner for at least 10 business days; and

17 (c) a statement of the maximum and minimum proposed  
 18 offering prices and the maximum underwriting discounts and  
 19 commissions has been on file for 2 business days or such  
 20 shorter period as the commissioner permits by rule or  
 21 otherwise and the offering is made within those limitations.

22 (3) The registrant shall promptly notify the  
 23 commissioner of the date and time when the federal  
 24 registration statement or other filings became effective and  
 25 the content of the price amendment, if any, and shall

1 promptly file a posteffective amendment containing the  
 2 information and documents in the price amendment. "Price  
 3 amendment" means the final federal amendment which includes  
 4 a statement of the offering price, underwriting and selling  
 5 discounts or commissions, amount of proceeds, conversion  
 6 rates, call prices, and other matters dependent upon the  
 7 offering price.

8 (4) Upon failure to receive the required notification  
 9 and posteffective amendment with respect to the price  
 10 amendment referred to in subsection (2) of this section, the  
 11 commissioner may enter a stop denial order, without notice  
 12 or hearing, retroactively denying effectiveness to the  
 13 registration statement or suspending its effectiveness until  
 14 compliance with subsection (2) of this section, if he  
 15 promptly notifies the registrant of the issuance of the  
 16 order. If the registrant proves compliance with the  
 17 requirements as to notice and posteffective amendment, the  
 18 stop denial order is void as of the time of its entry. The  
 19 commissioner may by rule or otherwise waive either or both  
 20 of the conditions specified in subsections (2)(b) and (2)(c)  
 21 of this section. If the federal registration statement or  
 22 other filing becomes effective before all these conditions  
 23 are satisfied and they are not waived, the registration  
 24 statement automatically becomes effective as soon as all  
 25 conditions are satisfied. If the registrant advises the

1 commissioner of the date when the federal registration  
 2 statement or other filing is expected to become effective  
 3 the commissioner shall promptly advise the registrant  
 4 whether all the conditions are satisfied and whether he then  
 5 contemplates the institution of a proceeding under  
 6 30-10-207; but this advice by the commissioner does not  
 7 preclude the institution of such a proceeding at any time."

8 Section 6. Section 30-10-206, MCA, is amended to read:  
 9 "30-10-206. General provisions regarding registration  
 10 of securities. (1) A registration statement may be filed by  
 11 the issuer, any other person on whose behalf the offering is  
 12 to be made, or a registered broker-dealer. Any document  
 13 filed under parts 1 through 3 of this chapter or a  
 14 predecessor law within 5 3 years preceding the filing of a  
 15 registration statement may be incorporated by reference in  
 16 the registration statement to the extent that the document  
 17 is currently accurate. The commissioner may by rule or  
 18 otherwise permit the omission of any item of information or  
 19 document from any registration statement.

20 (2) (a) The commissioner may require as a condition of  
 21 registration by qualification or coordination:

22 (i) that any security issued within the past 3 years  
 23 or to be issued to a promoter for a consideration  
 24 substantially different from the public offering price, or  
 25 to any person for a consideration other than cash, be

1 deposited in escrow; and

2 (ii) that the proceeds from the sale of the registered  
3 security in this state be impounded until the issuer  
4 receives a specified amount from the sale of the security  
5 either in this state or elsewhere.

6 (b) The commissioner may determine the conditions of  
7 any escrow or impounding required hereunder, but he may not  
8 reject a depository solely because of location in another  
9 state.

10 (3) When securities are registered by notification,  
11 coordination, or qualification, they may be offered and sold  
12 by the issuer, any other person on whose behalf they are  
13 registered, or by any registered broker-dealer. Every  
14 registration shall remain effective for a period of 1 year  
15 unless it is revoked by the commissioner, terminated upon  
16 request of the registrant with the consent of the  
17 commissioner, or renewed under 30-10-209(1)(b); however,  
18 said registration shall be automatically suspended upon a  
19 stop order or suspension proceedings being instituted by the  
20 securities and exchange commission relative to said  
21 securities and shall continue suspended so long as such  
22 proceedings are pending and until the registration or filing  
23 with the securities and exchange commission is effective.  
24 All outstanding securities of the same class as a currently  
25 registered security are considered to be registered for the

1 purpose of any nonissuer transaction. A registration  
2 statement which has become effective may not be withdrawn  
3 for 1 year from its effective date if any securities of the  
4 same class are outstanding.

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

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

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

16 (5) No securities registration statement may be  
17 withdrawn, whether or not such statement has become  
18 effective, without the express written consent of the  
19 commissioner."

20 Section 7. Section 30-10-207, MCA, is amended to read:  
21 "30-10-207. Denial, suspension, and revocation of  
22 registration of securities. (1) The commissioner may issue  
23 an order denying effectiveness to, or suspending or revoking  
24 the effectiveness of, any registration statement if he finds  
25 that the order is in the public interest and that:

1 (a) the registration statement, as of its effective  
2 date or as of any earlier date in the case of an order  
3 denying effectiveness, is incomplete in any material respect  
4 or contains any statement which was, in the light of the  
5 circumstances under which it was made, false or misleading  
6 with respect to any material fact;

7 (b) any provision of parts 1 through 3 of this chapter  
8 or any rule, order, or condition lawfully imposed under  
9 parts 1 through 3 of this chapter has been willfully  
10 violated, in connection with the offering, by:

11 (i) the person filing the registration statement;

12 (ii) the issuer, any partner, officer, or director of  
13 the issuer, any person occupying a similar status or  
14 performing similar functions, or any person directly or  
15 indirectly controlling or controlled by the issuer, but only  
16 if the person filing the registration statement is directly  
17 or indirectly controlled by or acting for the issuer; or

18 (iii) any underwriter;

19 (c) the security registered or sought to be registered  
20 is the subject of a permanent or temporary injunction of any  
21 court of competent jurisdiction entered under any other  
22 federal or state law applicable to the offering, but:

23 (i) the commissioner may not institute a proceeding  
24 against an effective registration statement under this  
25 subsection (c) more than 1 year from the date of the

1 injunction relied on; and

2 (ii) he may not enter an order under this subsection  
3 (c) on the basis of an injunction entered under any other  
4 state law unless that order or injunction was based on facts  
5 which would currently constitute a ground for an order under  
6 this section;

7 (d) the issuer's enterprise or method of business  
8 includes or would include activities which are illegal where  
9 performed;

10 (e) the offering has worked or tended to work a fraud  
11 upon purchasers or would so operate;

12 (f) when a security is sought to be registered by  
13 notification, it is not eligible for such registration;

14 (g) when a security is sought to be registered by  
15 coordination, there has been a failure to comply with the  
16 undertaking required by 30-10-204(1)(g);

17 (h) the applicant or registrant has failed to pay the  
18 proper registration fee, but the commissioner may enter only  
19 a denial order under this subsection, and he shall vacate  
20 any such order when the deficiency has been corrected; or

21 (i) the offering has been or would be made with  
22 unreasonable amounts of underwriters' and sellers'  
23 discounts, commissions, or other compensation, or promoters'  
24 profits or participation, or unreasonable amounts or kinds  
25 of options.

1 (2) The commissioner may not enter a step suspension  
 2 or revocation order against an effective registration  
 3 statement on the basis of a fact or transaction known to him  
 4 when the registration statement became effective.

5 (3) Upon the entry of an order under subsection (1) of  
 6 this section, the commissioner shall promptly notify the  
 7 issuer of the securities and the applicant or registrant  
 8 that an order has been entered and of the reasons therefor  
 9 and that, if requested by the issuer or registrant within 15  
 10 days after the receipt of the commissioner's notification,  
 11 the matter will be set promptly down for hearing. If no  
 12 hearing is requested within 15 days and none is ordered by  
 13 the commissioner, the order will remain in effect until it  
 14 is modified or vacated by the commissioner. If a hearing is  
 15 requested or ordered, the commissioner, after notice of and  
 16 opportunity for hearing, may affirm, modify, or vacate the  
 17 order."

18 Section 8. Section 30-10-209, MCA, is amended to read:  
 19 "30-10-209. Fees. The following fees shall be paid in  
 20 advance under the provisions of parts 1 through 3 of this  
 21 chapter:

22 (1) (a) For the registration of securities by  
 23 notification, coordination, or qualification, there shall be  
 24 paid to the commissioner for the first year of registration  
 25 a registration fee of \$200 for the first \$100,000 of initial

1 issue or portion thereof in this state, based on offering  
 2 price, plus 1/10 of 1% for any excess over \$100,000, with a  
 3 maximum of \$1,000.

4 (b) Each year thereafter, a registration of securities  
 5 may be renewed, prior to its termination date, for an  
 6 additional year upon consent of the commissioner and payment  
 7 of an additional registration fee to be computed at 1/10 of  
 8 1% of the aggregate offering price of such securities which  
 9 are to be offered in this state during that year, even  
 10 though the maximum fee was paid the preceding year. In no  
 11 event shall the additional registration fee be less than  
 12 \$200 or more than \$1,000. The registration statement for  
 13 such securities may be amended to increase the amount of  
 14 securities to be offered.

15 (c) If a registrant sells securities in excess of the  
 16 aggregate amount registered for sale in this state, the  
 17 registrant may file an amendment to the registration  
 18 statement to include the excess sales. If the registrant  
 19 fails to file an amendment before the expiration date of the  
 20 registration order, he shall pay a filing fee for the excess  
 21 sales of three times the amount calculated in the manner  
 22 specified in subsection (1)(b). Registration of the excess  
 23 securities is effective retroactively to the date of the  
 24 existing registration.

25 (2) (a) For registration of a broker-dealer or

1 investment adviser, the fee shall be \$200 for original  
2 registration and \$200 for each annual renewal.

3 (b) For registration of a salesman, the fee shall be  
4 \$50 for original registration with each employer, \$50 for  
5 each annual renewal, and \$50 for each transfer.

6 (3) For certified copies of any documents filed with  
7 the commissioner, the fee shall be the cost to the  
8 department.

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

14 ~~{5}--For--waiver--of--the--residency---requirement---of~~  
15 ~~30-10-201{4},--the--fee--shall--be--\$50--for--each--original~~  
16 ~~registration-~~

17 {6}{5} All fees are considered fully earned when  
18 received. In the event of overpayment, only those amounts in  
19 excess of \$10 may be refunded.

20 {7}{6} All fees, examination charges, and  
21 miscellaneous charges, except fines or penalties, collected  
22 by the commissioner pursuant to parts 1 through 3 of this  
23 chapter and the rules adopted hereunder must be deposited  
24 into the securities regulatory trust account, pursuant to  
25 30-10-115 through 30-10-118.

1 ~~{8}{7}~~ All fines and penalties collected by the  
2 commissioner pursuant to parts 1 through 3 of this chapter  
3 and the rules adopted hereunder must be deposited into the  
4 general fund."

5 Section 9. Section 30-10-301, MCA, is amended to read:

6 "30-10-301. Fraudulent and other prohibited practices.

7 (1) It is unlawful for any person, in connection with the  
8 offer, sale, or purchase of any security, directly or  
9 indirectly, in, into, or from this state, to:

10 (a) employ any device, scheme, or artifice to defraud;

11 (b) make any untrue statement of a material fact or  
12 omit to state a material fact necessary in order to make the  
13 statements made, in the light of the circumstances under  
14 which they are made, not misleading; or

15 (c) engage in any act, practice, or course of business  
16 which operates or would operate as a fraud or deceit upon  
17 any person.

18 (2) {a} It is unlawful for any person who receives,  
19 directly or indirectly, any consideration from another  
20 person primarily for advising the other person as to the  
21 value of securities or their purchase or sale, whether  
22 through the issuance of analysis or reports or otherwise,  
23 to:

24 ~~{a}{i}~~ to employ any device, scheme, or artifice to  
25 defraud the other person; or



1        (b)(ii) to engage in any act, practice, or course of  
 2 business which operates or would operate as a fraud or  
 3 deceit upon the other person; or

4        (iii) without disclosing to the client in writing  
 5 before the completion of the transaction the capacity in  
 6 which he is acting and obtaining the consent of the client  
 7 to the transaction:

8        (A) acting as principal for his own account, to  
 9 knowingly sell any security to or purchase any security from  
 10 a client; or

11        (B) acting as agent for a person other than such  
 12 client, to knowingly effect the sale or purchase of any  
 13 security for the account of such client.

14        (b) The prohibitions of subsection (2)(a)(iii) do not  
 15 apply to any transaction with a customer of a broker-dealer  
 16 if the broker-dealer is not being compensated for rendering  
 17 investment advice in relation to such transaction.

18        (3) In the solicitation of advisory clients, it is  
 19 unlawful for a person to:

20        (a) make a false statement of a material fact; or

21        (b) omit a material fact necessary to make a statement  
 22 not misleading in light of the circumstances under which it  
 23 is made.

24        (3)(4) Except as permitted by rule or order of the  
 25 commissioner, it is unlawful for any investment adviser to

1        enter into, extend, or renew any investment advisory  
 2 contract unless it provides in writing that:

3        (a) the investment adviser shall not be compensated on  
 4 the basis of a share of capital gains upon or capital  
 5 appreciation of the funds or any portion of the funds of the  
 6 client;

7        (b) no assignment of the contract may be made by the  
 8 investment adviser without the consent of the other party to  
 9 the contract; and

10        (c) the investment adviser, if a partnership, shall  
 11 notify the other party to the contract of any change in the  
 12 membership of the partnership within a reasonable time after  
 13 the change.

14        (5) Subsection (4)(a) does not prohibit an investment  
 15 advisory contract which provides for compensation based upon  
 16 the total value of a fund averaged over a definite period or  
 17 as of definite dates or taken as of a definite date.  
 18 "Assignment", as used in subsection (4)(b), includes any  
 19 direct or indirect transfer or hypothecation of an  
 20 investment advisory contract by the assignor or of a  
 21 controlling block of the assignor's outstanding voting  
 22 securities by a security holder of the assignor; but if the  
 23 investment adviser is a partnership, no assignment of an  
 24 investment advisory contract is considered to result from  
 25 the death or withdrawal of a minority of the members of the

1 investment adviser having only a minority interest in the  
 2 business of the investment adviser or from the admission to  
 3 the investment adviser of one or more members who, after  
 4 admission, will be only a minority of the members and will  
 5 have only a minority interest in the business.

6 (6) It is unlawful for an investment adviser to take  
 7 or have custody of any securities or funds of any client if:

8 (a) the commissioner by rule prohibits such custody;  
 9 or

10 (b) in the absence of rule, the investment adviser  
 11 fails to notify the commissioner that he has or may have  
 12 such custody."

13 Section 10. Section 30-10-304, MCA, is amended to  
 14 read:

15 "30-10-304. Investigations and subpoenas. (1) The  
 16 commissioner in his discretion may:

17 (a) make such public or private investigations or  
 18 examinations within or without this state as he deems  
 19 necessary to determine whether any registration should be  
 20 granted, denied, or revoked or whether any person has  
 21 violated or is about to violate any provision of parts 1  
 22 through 3 of this chapter or any rule or order hereunder or  
 23 to aid in the enforcement of parts 1 through 3 of this  
 24 chapter or in the prescribing of rules and forms hereunder;

25 (b) require or permit any person to file a statement

1 in writing, under oath or otherwise as the commissioner may  
 2 determine, as to all the facts and circumstances concerning  
 3 the matter to be investigated; and

4 (c) publish information concerning any violation of  
 5 parts 1 through 3 of this chapter or any rule or order  
 6 hereunder.

7 (2) (a) For the purpose of any investigation or  
 8 proceeding under parts 1 through 3 of this chapter, the  
 9 commissioner or any officer designated by him may administer  
 10 oaths and affirmations, subpoena witnesses, compel their  
 11 attendance, take evidence, and require the production of any  
 12 books, papers, correspondence, memoranda, agreements, or  
 13 other documents or records which the commissioner deems  
 14 relevant or material to the inquiry.

15 (b) The commissioner may issue and apply to enforce  
 16 subpoenas in this state at the request of a securities  
 17 agency or administrator of another state if the activities  
 18 constituting an alleged violation for which the information  
 19 is sought would be a violation of the Securities Act of  
 20 Montana if the activities had occurred in this state.

21 (3) In case of contumacy by or refusal to obey a  
 22 subpoena issued to any person, any court of competent  
 23 jurisdiction, upon application by the commissioner, may  
 24 issue to that person an order requiring him to appear before  
 25 the commissioner or the officer designated by him, there to

1 produce documentary evidence if so ordered or to give  
2 evidence touching the matter under investigation or in  
3 question. Any failure to obey the order of the court may be  
4 punished by the court as a contempt of court.

5 (4) No person is excused from attending and testifying  
6 or from producing any document or record before the  
7 commissioner or in obedience to the subpoena of the  
8 commissioner or any officer designated by him, or in any  
9 proceeding instituted by the commissioner, on the ground  
10 that the testimony or evidence (documentary or otherwise)  
11 required of him may tend to incriminate him or subject him  
12 to a penalty or forfeiture; but no compelled testimony or  
13 evidence or any information directly or indirectly derived  
14 from such testimony or evidence may be used against the  
15 witness in any criminal case. Nothing in this section  
16 prohibits the commissioner from granting immunity from  
17 prosecution for or on account of any transaction, matter, or  
18 thing concerning which a witness is compelled to testify if  
19 the commissioner determines, in his sole discretion, that  
20 the ends of justice would be served thereby. Immunity may  
21 not extend to prosecution or punishment for false statements  
22 given pursuant to the subpoena."

23 Section 11. Section 30-10-307, MCA, is amended to  
24 read:

25 "30-10-307. Civil liabilities. (1) Any person who

1 offers or sells a security in violation ~~of any provisions~~ of  
2 30-10-202 ~~through 30-10-205~~ or offers or sells a security by  
3 means of fraud or misrepresentation is liable to the person  
4 buying the security from him, who may sue either at law or  
5 in equity to recover the consideration paid for the  
6 security, together with interest at 10% per annum from the  
7 date of payment, costs, and reasonable attorneys' fees, less  
8 the amount of any income received on the security, upon the  
9 tender of the security, or for damages if he no longer owns  
10 the security. Damages are the amount that would be  
11 recoverable upon a tender less:

12 (a) the value of the security when the buyer disposed  
13 of it; and

14 (b) interest at 10% per annum from the date of  
15 disposition.

16 (2) Every person who directly or indirectly controls a  
17 seller liable under subsection (1), every partner, officer,  
18 or director (or person occupying a similar status or  
19 performing similar functions) or employee of such a seller,  
20 and every broker-dealer or salesman who participates or  
21 materially aids in the sale is liable jointly and severally  
22 with and to the same extent as the seller if the nonseller  
23 knew, or in the exercise of reasonable care could have  
24 known, of the existence of the facts by reason of which the  
25 liability is alleged to exist. There shall be contribution

1 among the several persons so liable.

2 (3) Any tender specified in this section may be made  
3 at any time before entry of judgment. A cause of action  
4 under this statute survives the death of any person who  
5 might have been a plaintiff or a defendant. No person may  
6 sue under this section:

7 (a) if the buyer has received a written offer, at a  
8 time when he owned the security, to refund the consideration  
9 paid, together with interest at 10% per annum from the date  
10 of payment, less the amount of any income received on the  
11 security and he failed to accept the offer within 30 days of  
12 its receipt; or

13 (b) if the buyer has received a written offer at a  
14 time when he did not own the security in the amount that  
15 would be recoverable under subsection (1) upon a tender  
16 less:

17 (i) the value of the security when the buyer disposed  
18 of it; and

19 (ii) interest at 10% per annum from the date of  
20 disposition.

21 (4) No person who has made or engaged in the  
22 performance of any contract in violation of any provision of  
23 parts 1 through 3 of this chapter or any rule or order  
24 hereunder or who has acquired any purported right under any  
25 such contract with knowledge of the facts by reason of which

1 its making or performance was in violation may base any suit  
2 on the contract. Any condition, stipulation, or provision  
3 binding any person acquiring any security to waive  
4 compliance with any provision of parts 1 through 3 of this  
5 chapter or any rule or order hereunder is void as against  
6 public policy and in the public interest."

7 Section 12. Section 90-8-304, MCA, is amended to read:  
8 "90-8-304. Application of securities law. In lieu of  
9 registration under Title 30, chapter 10, a certified Montana  
10 capital company may file all disclosure documents, along  
11 with a consent to service of process, with the state  
12 securities commissioner. The commissioner may not charge a  
13 fee for such filing ~~or deposit.~~"

14 NEW SECTION. Section 13. Coordination instruction. If  
15 Bill No. [LC 1053] is not passed and approved, section 4  
16 of this act, amending 30-10-201, is amended so that  
17 30-10-201(5) and (6) read as follows:

18 "(5) The application shall contain whatever  
19 information the commissioner requires. No registration  
20 application of a broker-dealer, salesman, or investment  
21 adviser may be withdrawn before the commissioner approves or  
22 denies such registration, without the express written  
23 consent of the commissioner.

24 (6) When the registration requirements are complied  
25 with met, the commissioner shall ~~approve-the-registration.~~

1 make the registration effective. No effective registration  
2 of a broker-dealer, salesman, or investment adviser may be  
3 withdrawn without the express written consent of the  
4 commissioner."

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

9 NEW SECTION. Section 15. Effective date. This act is  
10 effective on passage and approval.

-End-

1                   SENATE BILL NO. 247  
 2                   INTRODUCED BY MEYER, BRANDEWIE, MILLER  
 3                   BY REQUEST OF THE STATE AUDITOR AND  
 4                   SECURITIES COMMISSIONER  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103  
 8 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206,  
 9 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND  
 10 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 11

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

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

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

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

1           (a) effecting a transaction in a security exempted by  
 2 subsections (1), (2), (3), (8), (9), (10), or (11), ~~or (12)~~  
 3 of 30-10-104;

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

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

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

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

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

1 (5) "Guaranteed" means guaranteed as to payment of  
2 principal, interest, or dividends.

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

10 (b) The term includes a financial planner or other  
11 person who:

12 (i) as an integral component of other financially  
13 related services, provides the investment advisory services  
14 described in subsection (6)(a) to others for compensation,  
15 as part of a business; or

16 (ii) represents himself as providing the investment  
17 advisory services described in subsection (6)(a) to others  
18 for compensation.

19 (c) "Investment adviser" does not include:

20 (a)(i) a bank, savings institution, trust company, or  
21 insurance company;

22 (b)(ii) a lawyer, accountant, engineer, or teacher  
23 whose performance of these services is solely incidental to  
24 the practice of his profession;

25 (c)(iii) a broker-dealer;

1 (d)(iv) a publisher of any bona-fide newspaper, news  
2 column, newsletter, news magazine, or business or financial  
3 publication of ~~general, regular, and paid circulation or~~  
4 service, whether communicated in hard copy form or by  
5 electronic means or otherwise, that does not consist of the  
6 rendering of advice on the basis of the specific investment  
7 situation of each client;

8 (e)(v) a person whose advice, analyses, or reports  
9 relate only to securities exempted by 30-10-104(1); or

10 (f) ~~a person who has no place of business in this~~  
11 ~~state if his only clients in this state are other investment~~  
12 ~~advisers, broker-dealers, banks, savings institutions, trust~~  
13 ~~companies, insurance companies, investment companies as~~  
14 ~~defined in the Investment Company Act of 1940, pension or~~  
15 ~~profit-sharing trusts, or other financial institutions or~~  
16 ~~institutional buyers, whether acting for themselves or as~~  
17 ~~trustees; or~~

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

21 (7) "Issuer" means any person who issues or proposes  
22 to issue any security, except that with respect to  
23 certificates of deposit, voting-trust certificates, or  
24 collateral-trust certificates or with respect to  
25 certificates of interest or shares in an unincorporated

1 investment trust not having a board of directors (or persons  
2 performing similar functions) or of the fixed, restricted  
3 management, or unit type, the term "issuer" means the person  
4 or persons performing the acts and assuming the duties of  
5 depositor or manager pursuant to the provisions of the trust  
6 or other agreement or instrument under which the security is  
7 issued.

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

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

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

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

22 (c) Any security given or delivered with or as a bonus  
23 on account of any purchase of securities or any other thing  
24 is considered to constitute part of the subject of the  
25 purchase and to have been offered and sold for value. A

1 purported gift of assessable stock is considered to involve  
2 an offer and sale. Every sale or offer of a warrant or right  
3 to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security  
5 which gives the holder a present or future right or  
6 privilege to convert into another security of the same or  
7 another issuer, is considered to include an offer of the  
8 other security.

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

14 (12) "Security" means any note; stock; treasury stock;  
15 bond; debenture; evidence of indebtedness; certificate of  
16 interest or participation in any profit-sharing agreement;  
17 collateral-trust certificate; preorganization certificate or  
18 subscription; transferable shares; investment contract;  
19 voting-trust certificate; certificate of deposit for a  
20 security; certificate of interest or participation in an  
21 oil, gas, or mining title or lease or in payments out of  
22 production under such a title or lease; or, in general, any  
23 interest or instrument commonly known as a security or any  
24 certificate of interest or participation in, temporary or  
25 interim certificate for, receipt for, guarantee of, or



1 warrant or right to subscribe to or purchase any of the  
2 foregoing. "Security" does not include any insurance or  
3 endowment policy or annuity contract under which an  
4 insurance company promises to pay a sum of money either in a  
5 lump sum or periodically for life or some other specified  
6 period.

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

10 (14) "Transact", "transact business", or "transaction"  
11 includes the meanings of the terms "sale", "sell", and  
12 "offer".

13 Section 2. Section 30-10-104, MCA, is amended to read:

14 "30-10-104. Exempt securities. Sections 30-10-202  
15 through 30-10-207 do not apply to any of the following  
16 securities:

17 (1) any security (including a revenue obligation)  
18 issued or guaranteed by the United States, any state, any  
19 political subdivision of a state, or any agency or corporate  
20 or other instrumentality of one or more of the foregoing;  
21 provided, however, 30-10-202 through 30-10-207 apply to a  
22 security issued by any of the foregoing that is payable  
23 solely from payments to be received in respect of property  
24 or money used under a lease, sale, or loan arrangement by or  
25 for a nongovernmental industrial or commercial enterprise,

1 unless such enterprise or any security of which it is the  
2 issuer is within any of the exemptions enumerated in  
3 subsections (2) through ~~(9)~~ (13) of this section;

4 (2) any security issued or guaranteed by Canada, any  
5 Canadian province, any political subdivision of any such  
6 province, or any agency or corporate or other  
7 instrumentality of one or more of the foregoing or any other  
8 foreign government with which the United States currently  
9 maintains diplomatic relations if the security is recognized  
10 as a valid obligation by the issuer or guarantor;

11 (3) any security issued by and representing an  
12 interest in or a debt of or guaranteed by any bank organized  
13 under the laws of the United States or any bank, savings  
14 institution, or trust company organized and supervised under  
15 the laws of any state;

16 (4) any security issued by and representing an  
17 interest in or a debt of or guaranteed by any federal  
18 savings and loan association or any building and loan or  
19 similar association organized under the laws of any state  
20 and authorized to do business in this state;

21 ~~(5) any security issued or guaranteed by any~~  
22 ~~corporation subject to the supervision of the insurance~~  
23 ~~commissioner;~~

24 (6)(5) any security issued or guaranteed by any  
25

1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~(7)~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~(8)~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

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

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

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~(8)~~(7)(d), means the

1 most recent year for which audited financial statements are  
 2 available, provided that such statements cover a fiscal  
 3 period ended not more than 15 months from the commencement  
 4 of the offering.

5 (e) if the offering is of stock or shares, other than  
 6 preferred stock or shares, such securities have voting  
 7 rights and such rights include the right to have at least as  
 8 many votes per share and the right to vote on at least as  
 9 many general corporate decisions as each of the issuer's  
 10 outstanding classes of stock or shares, except as otherwise  
 11 required by law;

12 (f) if the offering is of stock or shares, other than  
 13 preferred stock or shares, such securities are owned  
 14 beneficially or of record on any date within 6 months prior  
 15 to the commencement of the offering by at least 1,200  
 16 persons and on such date there are at least 750,000 such  
 17 shares outstanding with an aggregate market value, based on  
 18 the average bid price for that day, of at least \$3,750,000.  
 19 In connection with the determination of the number of  
 20 persons who are beneficial owners of the stock or shares of  
 21 an issuer, the issuer or broker-dealer may rely in good  
 22 faith for the purposes of this section upon written  
 23 information furnished by the record owners.

24 (9)(8) any security issued by any person organized and  
 25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
 2 social, athletic, or reformatory purposes if the issuer pays  
 3 a fee of \$50 and files with the commissioner 20 days prior  
 4 to the offering a written notice specifying the terms of the  
 5 offer and the commissioner does not disallow the exemption  
 6 in writing within such 20-day period;

7 (10)(9) any commercial paper which arises out of a  
 8 current transaction or the proceeds of which have been or  
 9 are to be used for current transaction and which evidences  
 10 an obligation to pay cash within 9 months of the date of  
 11 issuance, exclusive of days of grace, or any renewal of such  
 12 paper which is likewise limited or any guarantee of such  
 13 paper or of any such renewal, when such commercial paper is  
 14 sold to the banks or insurance companies;

15 (11)(10) any investment contract issued in connection  
 16 with an employee's stock purchase, savings, pension,  
 17 profit-sharing, or similar benefit plan;

18 (12)(11) any security for which the commissioner  
 19 determines by order that an exemption would better serve the  
 20 purposes of 30-10-102 than would registration. The fee for  
 21 this exemption must be as prescribed in 30-10-209(4).

22 (13)(12) any security listed or approved for listing  
 23 upon notice of issuance on the New York stock exchange, the  
 24 American stock exchange, the Pacific stock exchange, the  
 25 Midwest stock exchange, or any other stock exchange

1 registered with the federal securities and exchange  
 2 commission and approved by the commissioner; any other  
 3 security of the same issuer that is of senior or  
 4 substantially equal rank; any security called for by  
 5 subscription rights or warrants so listed or approved; or  
 6 any warrant or right to purchase or subscribe to any of the  
 7 foregoing;

8 ~~{14}~~(13) any national market system security listed or  
 9 approved for listing upon notice of issuance on the national  
 10 association of securities dealers automated quotation system  
 11 or any other national quotation system approved by the  
 12 commissioner; any other security of the same issuer that is  
 13 of senior or substantially equal rank; any security called  
 14 for by subscription rights or warrants so listed or  
 15 approved; or any warrant or right to purchase or subscribe  
 16 to any of the securities listed in this subsection."

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

18 "30-10-105. Exempt transactions. Except as in this  
 19 section expressly provided, 30-10-201 through 30-10-207  
 20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
 22 effected through a broker-dealer or not; A transaction is  
 23 presumed to be isolated if it is one of not more than three  
 24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
 2 if:

3 (i) quotations for the securities to be offered or  
 4 sold (or the securities issuable upon exercise of any  
 5 warrant or right to purchase or subscribe to such  
 6 securities) are reported by the automated quotations system  
 7 operated by the national association of securities dealers,  
 8 inc., (NASDAQ) or by any other quotation system approved by  
 9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
 11 interest or dividend provision and there has been no default  
 12 during the current fiscal year or within the 3 preceding  
 13 fiscal years, or during the existence of the issuer and any  
 14 predecessors if less than 3 years, in the payment of  
 15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
 17 exemption specified in subsection (2)(a) with respect to a  
 18 specific security. Upon the entry of such an order, the  
 19 commissioner shall promptly notify all registered  
 20 broker-dealers that it has been entered and of the reasons  
 21 therefor and that within 15 days of the receipt of a written  
 22 request the matter will be set down for hearing. If no  
 23 hearing is requested and none is ordered by the  
 24 commissioner, the order will remain in effect until it is  
 25 modified or vacated by the commissioner. If a hearing is

1 requested or ordered, the commissioner, after notice of and  
 2 opportunity for hearing to all interested persons, may  
 3 modify or vacate the order or extend it until final  
 4 determination. No order under this subsection may operate  
 5 retroactively. No person may be considered to have violated  
 6 parts 1 through 3 of this chapter by reason of any offer or  
 7 sale effected after the entry of an order under this  
 8 subsection if he sustains the burden of proof that he did  
 9 not know and in the exercise of reasonable care could not  
 10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
 12 registered broker-dealer pursuant to an unsolicited order or  
 13 offer to buy, but the commissioner may require that the  
 14 customer acknowledge upon a specified form that the sale was  
 15 unsolicited and that a signed copy of each form be preserved  
 16 by the broker-dealer for a specified period;

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

20 (5) any transaction by an executor, administrator,  
 21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 22 or conservator in the performance of his official duties as  
 23 such;

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

1 chapter;

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

9 (8) (a) any transaction pursuant to an offer made in  
 10 this state directed by the offeror to not more than 10  
 11 persons (other than those designated in subsection (7))  
 12 during any period of 12 consecutive months, if:

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

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

22 (b) For the purpose of the exemption provided for in  
 23 subsection (8)(a), an offer to sell is made in this state,  
 24 whether or not the offeror or any of the offerees is then  
 25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
 2 received at the place to which it is directed (or at any  
 3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
 5 or subscription if:

6 (a) no commission or other remuneration is paid or  
 7 given directly or indirectly for soliciting any prospective  
 8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
 12 security holders of the issuer, including persons who at the  
 13 time of the transaction are holders of convertible  
 14 securities, nontransferable warrants, or transferable  
 15 warrants exercisable within not more than 90 days of their  
 16 issuance, if:

17 (a) no commission or other remuneration (other than a  
 18 standby commission) is paid or given directly or indirectly  
 19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
 21 terms of the offer and the commissioner does not by order  
 22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
 24 registration statements have been filed under both parts 1  
 25 through 3 of this chapter and the Securities Act of 1933 if

1 no ~~stop-order~~--or STOP, refusal, denial, suspension, or  
 2 revocation order is in effect and no public proceeding or  
 3 examination looking toward such an order is pending under  
 4 either law;

5 (12) any offer (but not a sale) of a security for which  
 6 a registration statement has been filed under parts 1  
 7 through 3 of this chapter and the commissioner in his  
 8 discretion does not disallow the offer in writing within 10  
 9 days of such filing;

10 (13) the issuance of any stock dividend, whether the  
 11 corporation distributing the dividend is the issuer of the  
 12 stock or not, if nothing of value is given by stockholders  
 13 for the distribution other than the surrender of a right to  
 14 a cash dividend where the stockholder can elect to take a  
 15 dividend in cash or stock;

16 (14) any transaction incident to a right of conversion  
 17 or a statutory or judicially approved reclassification,  
 18 recapitalization, reorganization, quasi-reorganization,  
 19 stock split, reverse stock split, merger, consolidation, or  
 20 sale of assets;

21 (15) any transaction in compliance with such rules as  
 22 the commissioner in his discretion may adopt to serve the  
 23 purposes of 30-10-102;--or. The commissioner may in his  
 24 discretion require that 30-10-201 through 30-10-207 apply to  
 25 any or all transactional exemptions adopted by rule.

1           (16) any transaction pursuant-to--the--Montana--Capital  
 2 ~~Company--Act,--Title--90,--chapter--8,--provided--that--a--Montana~~  
 3 ~~capital--company--must by a certified Montana capital company~~  
 4 ~~as defined in 90-8-104, provided that such company first~~  
 5 ~~file files~~ all disclosure documents, along with a consent to  
 6 service of process, with the state-securities commissioner.  
 7 The commissioner may not charge a fee for the filing or  
 8 deposit."

9           Section 4. Section 30-10-201, MCA, is amended to read:  
 10           "30-10-201. Registration of broker-dealers, salesmen,  
 11 and investment advisers. (1) It is unlawful for any person  
 12 to transact business in this state as a broker-dealer or  
 13 salesman, except in transactions exempt under 30-10-105,  
 14 unless he is registered under parts 1 through 3 of this  
 15 chapter.

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

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

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

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

1           (c) his only clients in this state are:  
 2           (i) investment companies, as defined in the Investment  
 3 Company Act of 1940, or insurance companies;  
 4           (ii) other investment advisers;  
 5           (iii) broker-dealers;  
 6           (iv) banks;  
 7           (v) trust companies;  
 8           (vi) savings and loan associations;  
 9           (vii) employee benefit plans with assets of not less  
 10 than \$1 million;  
 11           (viii) governmental agencies or instrumentalities,  
 12 whether acting for themselves or as trustees with investment  
 13 control; or  
 14           (ix) other institutional investors as are designated by  
 15 rule or order of the commissioner.

16           (4) A broker-dealer or a salesman, acting as an agent  
 17 for an issuer or as an agent for a broker-dealer in the  
 18 offer or sale of securities for an issuer, or an investment  
 19 adviser may apply for registration by filing an application  
 20 in such form as the commissioner prescribes and payment of  
 21 the fee prescribed in 30-10-209. ~~Except-for-persons-in-the~~  
 22 ~~employ-of-brokerage-firms-governed-by-the-regulations-of-the~~  
 23 ~~securities-and-exchange-commission,--all--salesmen--must--be~~  
 24 ~~legal-residents-of-this-state-and-must-have-actually-resided~~  
 25 ~~in--this-state-for-a-period-of-at-least-1-year-next-prior-to~~

1 ~~the date of application for registration. The commissioner~~  
 2 ~~may, upon request and for good cause shown by an applicant,~~  
 3 ~~waive the residency requirement. Payment of the waiver fee~~  
 4 ~~shall be as prescribed in 30-10-209.~~ A salesman acting as  
 5 agent for an issuer or broker-dealer who is not currently in  
 6 compliance with the financial responsibility requirements  
 7 prescribed by the Securities Exchange Act of 1934 and by  
 8 regulations adopted under it, may, in the discretion of the  
 9 commissioner, be required to file with the commissioner a  
 10 bond of a surety company duly authorized to transact  
 11 business in this state. The bond shall be in an amount  
 12 determined by the commissioner, payable to the state of  
 13 Montana and conditioned upon the faithful compliance with  
 14 the provisions of parts 1 through 3 of this chapter, and  
 15 provide that upon failure to so comply, the salesman shall  
 16 be liable to any and all persons who may suffer loss by  
 17 reason thereof.

18 (5) The application shall contain whatever information  
 19 the commissioner requires. No registration application of a  
 20 broker-dealer, salesman, investment adviser, or investment  
 21 adviser representative may be withdrawn before the  
 22 commissioner approves or denies such registration, without  
 23 the express written consent of the commissioner.

24 (6) When the registration requirements are complied  
 25 with met, the commissioner shall ~~approve the registration~~

1 make the registration effective. No effective registration  
 2 of a broker-dealer, salesman, investment adviser, or  
 3 investment adviser representative may be withdrawn without  
 4 the express written consent of the commissioner.

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

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



1 registered broker-dealer or investment adviser may file an  
2 application for registration of a successor, to become  
3 effective upon approval of the commissioner.

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

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

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

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

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

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

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

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

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--the--substantial--equivalent--of--those  
24 terms--as--defined--in--parts--1--through--3--of--this--chapter--or--is  
25 the--subject--of--an--order--of--the--federal--securities--and

1 exchange commission suspending or expelling him from a  
 2 national securities exchange or national securities  
 3 association registered under the Securities Exchange Act of  
 4 1934 or is the subject of a United States post office fraud  
 5 order, but:

6 (i) the commissioner may not institute a revocation or  
 7 suspension proceeding under this subsection (f) more than a  
 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; adjudication or determination, within  
 13 the past 5 years, by a securities or commodities agency or  
 14 administrator of another state or a court of competent  
 15 jurisdiction, that the person has violated the Securities  
 16 Act of 1933, the Securities Exchange Act of 1934, the  
 17 Investment Advisors Act of 1940, the Investment Company Act  
 18 of 1940, or the Commodity Exchange Act or the securities or  
 19 commodities law of any other state;

20 (g) has engaged in dishonest or unethical practices in  
 21 the securities business;

22 (h) is insolvent, either in the sense that his  
 23 liabilities exceed his assets or in the sense that he cannot  
 24 meet his obligations as they mature, but the commissioner  
 25 may not enter an order against a broker-dealer or investment

1 adviser under this subsection (h) without a finding of  
 2 insolvency as to the broker-dealer or investment adviser;

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

7 (j) has failed to pay the proper filing fee, but the  
 8 commissioner may enter only a denial order under this  
 9 subsection (j), and he shall vacate any such order when the  
 10 deficiency has been corrected; or

11 (k) has failed to reasonably supervise his salesmen or  
 12 employees, if he is a broker-dealer, or his investment  
 13 adviser representatives or employees, if he is an investment  
 14 adviser, to assure their compliance with this act.

15 (11) The commissioner may not institute a suspension or  
 16 revocation proceeding on the basis of a fact or transaction  
 17 known to him when registration became effective unless the  
 18 proceeding is instituted within 30 days after the date on  
 19 which the registration became effective.

20 (12) The commissioner may by order summarily postpone  
 21 or suspend registration pending final determination of any  
 22 proceeding under this section.

23 (13) Upon the entry of the order under subsection  
 24 (10) of this section, the commissioner shall promptly notify  
 25 the applicant or registrant, as well as the employer or

1 prospective employer if the applicant or registrant is a  
 2 salesman, that it has been entered and of the reasons  
 3 therefor and that if requested by the applicant or  
 4 registrant within 15 days after the receipt of the  
 5 commissioner's notification the matter will be promptly set  
 6 down for hearing. If no hearing is requested within 15 days  
 7 and none is ordered by the commissioner, the order will  
 8 remain in effect until it is modified or vacated by the  
 9 commissioner. If a hearing is requested or ordered, the  
 10 commissioner, after notice of and opportunity for hearing,  
 11 may affirm, modify, or vacate the order or extend it until  
 12 final determination.

13 ~~(12)~~(14) If the commissioner finds that any registrant  
 14 or applicant for registration is no longer in existence or  
 15 has ceased to do business as a broker-dealer, investment  
 16 adviser, or salesman or is subject to an adjudication of  
 17 mental incompetence or to the control of a committee,  
 18 conservator, or guardian or cannot be located after  
 19 reasonable search, the commissioner may by order cancel the  
 20 registration or application.

21 ~~(13)~~(15) The commissioner may, after suspending or  
 22 revoking registration of any broker-dealer, salesman, or  
 23 investment adviser under subsection (10), impose a fine not  
 24 to exceed \$5,000 upon such broker-dealer, salesman, or  
 25 investment adviser. The fine is in addition to all other

1 penalties imposed by the laws of this state and must be  
 2 collected by the commissioner in the name of the state of  
 3 Montana and deposited in the general fund. Imposition of  
 4 any fine under this subsection is an order from which an  
 5 appeal may be taken pursuant to 30-10-308. If any  
 6 broker-dealer, salesman, or investment adviser fails to pay  
 7 a fine referred to in this subsection, the amount of the  
 8 fine is a lien upon all of the assets and property of such  
 9 broker-dealer, salesman, or investment adviser in this state  
 10 and may be recovered by suit by the commissioner and  
 11 deposited in the general fund. Failure of a broker-dealer,  
 12 salesman, or investment adviser to pay a fine also  
 13 constitutes a forfeiture of his right to do business in this  
 14 state under parts 1 through 3 of this chapter."

15 Section 5. Section 30-10-204, MCA, is amended to read:  
 16 "30-10-204. Registration by coordination. (1) Any  
 17 security for which a registration statement has been filed  
 18 under the Securities Act of 1933 or any securities for which  
 19 filings have been made pursuant to regulation A or  
 20 regulation E, and amendments thereto, of the general rules  
 21 and regulations of the United States securities and exchange  
 22 commission, adopted pursuant to subsection (b) of section 3  
 23 of said Securities Act of 1933, in connection with the same  
 24 offering, may be registered by coordination. A registration  
 25 statement under this section shall contain the following

1 information and be accompanied by the following documents,  
 2 in addition to payment of the registration fee prescribed in  
 3 30-10-209:

4 (a) ~~three--copies~~ one copy of the prospectus or  
 5 offering circular and letter of notification filed under the  
 6 Securities Act of 1933 or the general rules and regulations  
 7 thereunder, together with all amendments thereto;

8 (b) the amount of securities to be offered in this  
 9 state;

10 (c) the states in which a registration statement or  
 11 similar document in connection with the offering has been or  
 12 is expected to be filed;

13 (d) any adverse order, judgment, or decree previously  
 14 entered in connection with the offering by any court or the  
 15 securities and exchange commission;

16 (e) if the commissioner by rule or otherwise requires,  
 17 a copy of the articles of incorporation and bylaws (or their  
 18 substantial equivalents) currently in effect, a copy of any  
 19 agreements with or among underwriters, a copy of any  
 20 indenture or other instrument governing the issuance of the  
 21 security to be registered, and a specimen or copy of the  
 22 security;

23 (f) if the commissioner requests, any other  
 24 information, or copies of any other documents, filed under  
 25 the Securities Act of 1933;

1 (g) an undertaking to forward promptly all amendments  
 2 to the federal registration statement or offering circular  
 3 and letter of notification, other than an amendment which  
 4 merely delays the effective date;

5 (h) a consent to service of process meeting the  
 6 requirements of 30-10-208; and

7 (i) such other information as the commissioner may  
 8 require.

9 (2) A registration statement by coordination under  
 10 this section automatically becomes effective at the moment  
 11 the federal registration statement or other filing becomes  
 12 effective if all the following conditions are satisfied:

13 (a) no stop order is in effect and no proceeding is  
 14 pending under 30-10-207;

15 (b) the registration statement has been on file with  
 16 the commissioner for at least 10 business days; and

17 (c) a statement of the maximum and minimum proposed  
 18 offering prices and the maximum underwriting discounts and  
 19 commissions has been on file for 2 business days or such  
 20 shorter period as the commissioner permits by rule or  
 21 otherwise and the offering is made within those limitations.

22 (3) The registrant shall promptly notify the  
 23 commissioner of the date and time when the federal  
 24 registration statement or other filings became effective and  
 25 the content of the price amendment, if any, and shall

1 promptly file a posteffective amendment containing the  
 2 information and documents in the price amendment. "Price  
 3 amendment" means the final federal amendment which includes  
 4 a statement of the offering price, underwriting and selling  
 5 discounts or commissions, amount of proceeds, conversion  
 6 rates, call prices, and other matters dependent upon the  
 7 offering price.

8 (4) Upon failure to receive the required notification  
 9 and posteffective amendment with respect to the price  
 10 amendment referred to in subsection (2) of this section, the  
 11 commissioner may enter a stop denial order, without notice  
 12 or hearing, retroactively denying effectiveness to the  
 13 registration statement or suspending its effectiveness until  
 14 compliance with subsection (2) of this section, if he  
 15 promptly notifies the registrant of the issuance of the  
 16 order. If the registrant proves compliance with the  
 17 requirements as to notice and posteffective amendment, the  
 18 stop denial order is void as of the time of its entry. The  
 19 commissioner may by rule or otherwise waive either or both  
 20 of the conditions specified in subsections (2)(b) and (2)(c)  
 21 of this section. If the federal registration statement or  
 22 other filing becomes effective before all these conditions  
 23 are satisfied and they are not waived, the registration  
 24 statement automatically becomes effective as soon as all  
 25 conditions are satisfied. If the registrant advises the

1 commissioner of the date when the federal registration  
 2 statement or other filing is expected to become effective  
 3 the commissioner shall promptly advise the registrant  
 4 whether all the conditions are satisfied and whether he then  
 5 contemplates the institution of a proceeding under  
 6 30-10-207; but this advice by the commissioner does not  
 7 preclude the institution of such a proceeding at any time."

8 Section 6. Section 30-10-206, MCA, is amended to read:  
 9 "30-10-206. General provisions regarding registration  
 10 of securities. (1) A registration statement may be filed by  
 11 the issuer, any other person on whose behalf the offering is  
 12 to be made, or a registered broker-dealer. Any document  
 13 filed under parts 1 through 3 of this chapter or a  
 14 predecessor law within 5 3 years preceding the filing of a  
 15 registration statement may be incorporated by reference in  
 16 the registration statement to the extent that the document  
 17 is currently accurate. The commissioner may by rule or  
 18 otherwise permit the omission of any item of information or  
 19 document from any registration statement.

20 (2) (a) The commissioner may require as a condition of  
 21 registration by qualification or coordination:

22 (i) that any security issued within the past 3 years  
 23 or to be issued to a promoter for a consideration  
 24 substantially different from the public offering price, or  
 25 to any person for a consideration other than cash, be

1 deposited in escrow; and

2 (ii) that the proceeds from the sale of the registered  
3 security in this state be impounded until the issuer  
4 receives a specified amount from the sale of the security  
5 either in this state or elsewhere.

6 (b) The commissioner may determine the conditions of  
7 any escrow or impounding required hereunder, but he may not  
8 reject a depository solely because of location in another  
9 state.

10 (3) When securities are registered by notification,  
11 coordination, or qualification, they may be offered and sold  
12 by the issuer, any other person on whose behalf they are  
13 registered, or by any registered broker-dealer. Every  
14 registration shall remain effective for a period of 1 year  
15 unless it is revoked by the commissioner, terminated upon  
16 request of the registrant with the consent of the  
17 commissioner, or renewed under 30-10-209(1)(b); however,  
18 said registration shall be automatically suspended upon a  
19 stop order or suspension proceedings being instituted by the  
20 securities and exchange commission relative to said  
21 securities and shall continue suspended so long as such  
22 proceedings are pending and until the registration or filing  
23 with the securities and exchange commission is effective.  
24 All outstanding securities of the same class as a currently  
25 registered security are considered to be registered for the

1 purpose of any nonissuer transaction. A registration  
2 statement which has become effective may not be withdrawn  
3 for 1 year from its effective date if any securities of the  
4 same class are outstanding.

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

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

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

16 (5) No securities registration statement may be  
17 withdrawn, whether or not such statement has become  
18 effective, without the express written consent of the  
19 commissioner."

20 Section 7. Section 30-10-207, MCA, is amended to read:  
21 "30-10-207. Denial, suspension, and revocation of  
22 registration of securities. (1) The commissioner may issue  
23 an order denying effectiveness to, or suspending or revoking  
24 the effectiveness of, any registration statement if he finds  
25 that the order is in the public interest and that:

1 (a) the registration statement, as of its effective  
2 date or as of any earlier date in the case of an order  
3 denying effectiveness, is incomplete in any material respect  
4 or contains any statement which was, in the light of the  
5 circumstances under which it was made, false or misleading  
6 with respect to any material fact;

7 (b) any provision of parts 1 through 3 of this chapter  
8 or any rule, order, or condition lawfully imposed under  
9 parts 1 through 3 of this chapter has been willfully  
10 violated, in connection with the offering, by:

11 (i) the person filing the registration statement;

12 (ii) the issuer, any partner, officer, or director of  
13 the issuer, any person occupying a similar status or  
14 performing similar functions, or any person directly or  
15 indirectly controlling or controlled by the issuer, but only  
16 if the person filing the registration statement is directly  
17 or indirectly controlled by or acting for the issuer; or

18 (iii) any underwriter;

19 (c) the security registered or sought to be registered  
20 is the subject of a permanent or temporary injunction of any  
21 court of competent jurisdiction entered under any other  
22 federal or state law applicable to the offering, but:

23 (i) the commissioner may not institute a proceeding  
24 against an effective registration statement under this  
25 subsection (c) more than 1 year from the date of the

1 injunction relied on; and

2 (ii) he may not enter an order under this subsection  
3 (c) on the basis of an injunction entered under any other  
4 state law unless that order or injunction was based on facts  
5 which would currently constitute a ground for an order under  
6 this section;

7 (d) the issuer's enterprise or method of business  
8 includes or would include activities which are illegal where  
9 performed;

10 (e) the offering has worked or tended to work a fraud  
11 upon purchasers or would so operate;

12 (f) when a security is sought to be registered by  
13 notification, it is not eligible for such registration;

14 (g) when a security is sought to be registered by  
15 coordination, there has been a failure to comply with the  
16 undertaking required by 30-10-204(1)(g);

17 (h) the applicant or registrant has failed to pay the  
18 proper registration fee, but the commissioner may enter only  
19 a denial order under this subsection, and he shall vacate  
20 any such order when the deficiency has been corrected; or

21 (i) the offering has been or would be made with  
22 unreasonable amounts of underwriters' and sellers'  
23 discounts, commissions, or other compensation, or promoters'  
24 profits or participation, or unreasonable amounts or kinds  
25 of options.

1 (2) The commissioner may not enter a stop suspension  
 2 or revocation order against an effective registration  
 3 statement on the basis of a fact or transaction known to him  
 4 when the registration statement became effective.

5 (3) Upon the entry of an order under subsection (1) of  
 6 this section, the commissioner shall promptly notify the  
 7 issuer of the securities and the applicant or registrant  
 8 that an order has been entered and of the reasons therefor  
 9 and that, if requested by the issuer or registrant within 15  
 10 days after the receipt of the commissioner's notification,  
 11 the matter will be set promptly down for hearing. If no  
 12 hearing is requested within 15 days and none is ordered by  
 13 the commissioner, the order will remain in effect until it  
 14 is modified or vacated by the commissioner. If a hearing is  
 15 requested or ordered, the commissioner, after notice of and  
 16 opportunity for hearing, may affirm, modify, or vacate the  
 17 order."

18 Section 8. Section 30-10-209, MCA, is amended to read:

19 "30-10-209. Fees. The following fees shall be paid in  
 20 advance under the provisions of parts 1 through 3 of this  
 21 chapter:

22 (1) (a) For the registration of securities by  
 23 notification, coordination, or qualification, there shall be  
 24 paid to the commissioner for the first year of registration  
 25 a registration fee of \$200 for the first \$100,000 of initial

1 issue or portion thereof in this state, based on offering  
 2 price, plus 1/10 of 1% for any excess over \$100,000, with a  
 3 maximum of \$1,000.

4 (b) Each year thereafter, a registration of securities  
 5 may be renewed, prior to its termination date, for an  
 6 additional year upon consent of the commissioner and payment  
 7 of an additional registration fee to be computed at 1/10 of  
 8 1% of the aggregate offering price of such securities which  
 9 are to be offered in this state during that year, even  
 10 though the maximum fee was paid the preceding year. In no  
 11 event shall the additional registration fee be less than  
 12 \$200 or more than \$1,000. The registration statement for  
 13 such securities may be amended to increase the amount of  
 14 securities to be offered.

15 (c) If a registrant sells securities in excess of the  
 16 aggregate amount registered for sale in this state, the  
 17 registrant may file an amendment to the registration  
 18 statement to include the excess sales. If the registrant  
 19 fails to file an amendment before the expiration date of the  
 20 registration order, he shall pay a filing fee for the excess  
 21 sales of three times the amount calculated in the manner  
 22 specified in subsection (1)(b). Registration of the excess  
 23 securities is effective retroactively to the date of the  
 24 existing registration.

25 (2) (a) For registration of a broker-dealer or



1 investment adviser, the fee shall be \$200 for original  
2 registration and \$200 for each annual renewal.

3 (b) For registration of a salesman, the fee shall be  
4 \$50 for original registration with each employer, \$50 for  
5 each annual renewal, and \$50 for each transfer.

6 (3) For certified copies of any documents filed with  
7 the commissioner, the fee shall be the cost to the  
8 department.

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

14 ~~{5}--For--waiver--of--the--residency---requirement---of~~  
15 ~~30-10-201{4},--the--fee--shall--be--\$50--for--each--original~~  
16 ~~registration.~~

17 {6}{5} All fees are considered fully earned when  
18 received. In the event of overpayment, only those amounts in  
19 excess of \$10 may be refunded.

20 {7}{6} All fees, examination charges, and  
21 miscellaneous charges, except fines or penalties, collected  
22 by the commissioner pursuant to parts 1 through 3 of this  
23 chapter and the rules adopted hereunder must be deposited  
24 into the securities regulatory trust account, pursuant to  
25 30-10-115 through 30-10-118.

1 ~~{8}{7}~~ All fines and penalties collected by the  
2 commissioner pursuant to parts 1 through 3 of this chapter  
3 and the rules adopted hereunder must be deposited into the  
4 general fund."

5 Section 9. Section 30-10-301, MCA, is amended to read:  
6 "30-10-301. Fraudulent and other prohibited practices.

7 (1) It is unlawful for any person, in connection with the  
8 offer, sale, or purchase of any security, directly or  
9 indirectly, in, into, or from this state, to:

10 (a) employ any device, scheme, or artifice to defraud;

11 (b) make any untrue statement of a material fact or  
12 omit to state a material fact necessary in order to make the  
13 statements made, in the light of the circumstances under  
14 which they are made, not misleading; or

15 (c) engage in any act, practice, or course of business  
16 which operates or would operate as a fraud or deceit upon  
17 any person.

18 (2) {a} It is unlawful for any person who receives,  
19 directly or indirectly, any consideration from another  
20 person primarily for advising the other person as to the  
21 value of securities or their purchase or sale, whether  
22 through the issuance of analysis or reports or otherwise,  
23 to:

24 ~~{a}{i}~~ to employ any device, scheme, or artifice to  
25 defraud the other person; or

1 (b)(ii) to engage in any act, practice, or course of  
 2 business which operates or would operate as a fraud or  
 3 deceit upon the other person; or

4 (iii) without disclosing to the client in writing  
 5 before the completion of the transaction the capacity in  
 6 which he is acting and obtaining the consent of the client  
 7 to the transaction:

8 (A) acting as principal for his own account, to  
 9 knowingly sell any security to or purchase any security from  
 10 a client; or

11 (B) acting as agent for a person other than such  
 12 client, to knowingly effect the sale or purchase of any  
 13 security for the account of such client.

14 (b) The prohibitions of subsection (2)(a)(iii) do not  
 15 apply to any transaction with a customer of a broker-dealer  
 16 if the broker-dealer is not being compensated for rendering  
 17 investment advice in relation to such transaction.

18 (3) In the solicitation of advisory clients, it is  
 19 unlawful for a person to:

20 (a) make a false statement of a material fact; or

21 (b) omit a material fact necessary to make a statement  
 22 not misleading in light of the circumstances under which it  
 23 is made.

24 (3)(4) If Except as permitted by rule or order of the  
 25 commissioner, it is unlawful for any investment adviser to

1 enter into, extend, or renew any investment advisory  
 2 contract unless it provides in writing that:

3 (a) the investment adviser shall not be compensated on  
 4 the basis of a share of capital gains upon or capital  
 5 appreciation of the funds or any portion of the funds of the  
 6 client;

7 (b) no assignment of the contract may be made by the  
 8 investment adviser without the consent of the other party to  
 9 the contract; and

10 (c) the investment adviser, if a partnership, shall  
 11 notify the other party to the contract of any change in the  
 12 membership of the partnership within a reasonable time after  
 13 the change.

14 (5) Subsection (4)(a) does not prohibit an investment  
 15 advisory contract which provides for compensation based upon  
 16 the total value of a fund averaged over a definite period or  
 17 as of definite dates or taken as of a definite date.  
 18 "Assignment", as used in subsection (4)(b), includes any  
 19 direct or indirect transfer or hypothecation of an  
 20 investment advisory contract by the assignor or of a  
 21 controlling block of the assignor's outstanding voting  
 22 securities by a security holder of the assignor; but if the  
 23 investment adviser is a partnership, no assignment of an  
 24 investment advisory contract is considered to result from  
 25 the death or withdrawal of a minority of the members of the

1 investment adviser having only a minority interest in the  
 2 business of the investment adviser or from the admission to  
 3 the investment adviser of one or more members who, after  
 4 admission, will be only a minority of the members and will  
 5 have only a minority interest in the business.

6 (6) It is unlawful for an investment adviser to take  
 7 or have custody of any securities or funds of any client if:

8 (a) the commissioner by rule prohibits such custody;  
 9 or

10 (b) in the absence of rule, the investment adviser  
 11 fails to notify the commissioner that he has or may have  
 12 such custody."

13 Section 10. Section 30-10-304, MCA, is amended to  
 14 read:

15 "30-10-304. Investigations and subpoenas. (1) The  
 16 commissioner in his discretion may:

17 (a) make such public or private investigations or  
 18 examinations within or without this state as he deems  
 19 necessary to determine whether any registration should be  
 20 granted, denied, or revoked or whether any person has  
 21 violated or is about to violate any provision of parts 1  
 22 through 3 of this chapter or any rule or order hereunder or  
 23 to aid in the enforcement of parts 1 through 3 of this  
 24 chapter or in the prescribing of rules and forms hereunder;

25 (b) require or permit any person to file a statement

1 in writing, under oath or otherwise as the commissioner may  
 2 determine, as to all the facts and circumstances concerning  
 3 the matter to be investigated; and

4 (c) publish information concerning any violation of  
 5 parts 1 through 3 of this chapter or any rule or order  
 6 hereunder.

7 (2) (a) For the purpose of any investigation or  
 8 proceeding under parts 1 through 3 of this chapter, the  
 9 commissioner or any officer designated by him may administer  
 10 oaths and affirmations, subpoena witnesses, compel their  
 11 attendance, take evidence, and require the production of any  
 12 books, papers, correspondence, memoranda, agreements, or  
 13 other documents or records which the commissioner deems  
 14 relevant or material to the inquiry.

15 (b) The commissioner may issue and apply to enforce  
 16 subpoenas in this state at the request of a securities  
 17 agency or administrator of another state if the activities  
 18 constituting an alleged violation for which the information  
 19 is sought would be a violation of the Securities Act of  
 20 Montana if the activities had occurred in this state.

21 (3) In case of contumacy by or refusal to obey a  
 22 subpoena issued to any person, any court of competent  
 23 jurisdiction, upon application by the commissioner, may  
 24 issue to that person an order requiring him to appear before  
 25 the commissioner or the officer designated by him, there to

1 produce documentary evidence if so ordered or to give  
2 evidence touching the matter under investigation or in  
3 question. Any failure to obey the order of the court may be  
4 punished by the court as a contempt of court.

5 (4) No person is excused from attending and testifying  
6 or from producing any document or record before the  
7 commissioner or in obedience to the subpoena of the  
8 commissioner or any officer designated by him, or in any  
9 proceeding instituted by the commissioner, on the ground  
10 that the testimony or evidence (documentary or otherwise)  
11 required of him may tend to incriminate him or subject him  
12 to a penalty or forfeiture; but no compelled testimony or  
13 evidence or any information directly or indirectly derived  
14 from such testimony or evidence may be used against the  
15 witness in any criminal case. Nothing in this section  
16 prohibits the commissioner from granting immunity from  
17 prosecution for or on account of any transaction, matter, or  
18 thing concerning which a witness is compelled to testify if  
19 the commissioner determines, in his sole discretion, that  
20 the ends of justice would be served thereby. Immunity may  
21 not extend to prosecution or punishment for false statements  
22 given pursuant to the subpoena."

23 Section 11. Section 30-10-307, MCA, is amended to  
24 read:

25 "30-10-307. Civil liabilities. (1) Any person who

1 offers or sells a security in violation of ~~any provisions~~ of  
2 30-10-202 through ~~30-10-205~~ or offers or sells a security by  
3 means of fraud or misrepresentation is liable to the person  
4 buying the security from him, who may sue either at law or  
5 in equity to recover the consideration paid for the  
6 security, together with interest at 10% per annum from the  
7 date of payment, costs, and reasonable attorneys' fees, less  
8 the amount of any income received on the security, upon the  
9 tender of the security, or for damages if he no longer owns  
10 the security. Damages are the amount that would be  
11 recoverable upon a tender less:

12 (a) the value of the security when the buyer disposed  
13 of it; and

14 (b) interest at 10% per annum from the date of  
15 disposition.

16 (2) Every person who directly or indirectly controls a  
17 seller liable under subsection (1), every partner, officer,  
18 or director (or person occupying a similar status or  
19 performing similar functions) or employee of such a seller,  
20 and every broker-dealer or salesman who participates or  
21 materially aids in the sale is liable jointly and severally  
22 with and to the same extent as the seller if the nonseller  
23 knew, or in the exercise of reasonable care could have  
24 known, of the existence of the facts by reason of which the  
25 liability is alleged to exist. There shall be contribution

1 among the several persons so liable.

2 (3) Any tender specified in this section may be made  
3 at any time before entry of judgment. A cause of action  
4 under this statute survives the death of any person who  
5 might have been a plaintiff or a defendant. No person may  
6 sue under this section:

7 (a) if the buyer has received a written offer, at a  
8 time when he owned the security, to refund the consideration  
9 paid, together with interest at 10% per annum from the date  
10 of payment, less the amount of any income received on the  
11 security and he failed to accept the offer within 30 days of  
12 its receipt; or

13 (b) if the buyer has received a written offer at a  
14 time when he did not own the security in the amount that  
15 would be recoverable under subsection (1) upon a tender  
16 less:

17 (i) the value of the security when the buyer disposed  
18 of it; and

19 (ii) interest at 10% per annum from the date of  
20 disposition.

21 (4) No person who has made or engaged in the  
22 performance of any contract in violation of any provision of  
23 parts 1 through 3 of this chapter or any rule or order  
24 hereunder or who has acquired any purported right under any  
25 such contract with knowledge of the facts by reason of which

1 its making or performance was in violation may base any suit  
2 on the contract. Any condition, stipulation, or provision  
3 binding any person acquiring any security to waive  
4 compliance with any provision of parts 1 through 3 of this  
5 chapter or any rule or order hereunder is void as against  
6 public policy and in the public interest."

7 Section 12. Section 90-8-304, MCA, is amended to read:

8 "90-8-304. Application of securities law. In lieu of  
9 registration under Title 30, chapter 10, a certified Montana  
10 capital company may file all disclosure documents, along  
11 with a consent to service of process, with the state  
12 securities commissioner. The commissioner may not charge a  
13 fee for such filing ~~or-deposit.~~"

14 NEW SECTION. Section 13. Coordination instruction. If  
15 Bill No. [LC 1053] is not passed and approved, section 4  
16 of this act, amending 30-10-201, is amended so that  
17 30-10-201(5) and (6) read as follows:

18 "(5) The application shall contain whatever  
19 information the commissioner requires. No registration  
20 application of a broker-dealer, salesman, or investment  
21 adviser may be withdrawn before the commissioner approves or  
22 denies such registration, without the express written  
23 consent of the commissioner.

24 (6) When the registration requirements are complied  
25 with met, the commissioner shall ~~approve-the-registration-~~

1 make the registration effective. No effective registration  
2 of a broker-dealer, salesman, or investment adviser may be  
3 withdrawn without the express written consent of the  
4 commissioner."

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

9 NEW SECTION. Section 15. Effective date. This act is  
10 effective on passage and approval.

-End-

## 1 SENATE BILL NO. 247

2 INTRODUCED BY MEYER, BRANDEWIE, MILLER

3 BY REQUEST OF THE STATE AUDITOR AND

4 SECURITIES COMMISSIONER

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103  
8 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206,  
9 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND  
10 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
11

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

13 Section 1. Section 30-10-103, MCA, is amended to read:

14 "30-10-103. Definitions. When used in parts 1 through  
15 3 of this chapter, unless the context requires otherwise,  
16 the following definitions apply:

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

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

1 (a) effecting a transaction in a security exempted by  
2 subsections (1), (2), (3), (8), (9), (10), or (11), ~~or (12)~~  
3 of 30-10-104;

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

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

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

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

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

1 (5) "Guaranteed" means guaranteed as to payment of  
2 principal, interest, or dividends.

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

10 (b) The term includes a financial planner or other  
11 person who:

12 (i) as an integral component of other financially  
13 related services, provides the investment advisory services  
14 described in subsection (6)(a) to others for compensation,  
15 as part of a business; or

16 (ii) represents himself as providing the investment  
17 advisory services described in subsection (6)(a) to others  
18 for compensation.

19 (c) "Investment adviser" does not include:

20 (a)(i) a bank, savings institution, trust company, or  
21 insurance company;

22 (b)(ii) a lawyer, accountant, engineer, or teacher  
23 whose performance of these services is solely incidental to  
24 the practice of his profession;

25 (c)(iii) a broker-dealer;

1 (d)(iv) a publisher of any bona-fide newspaper, news  
2 column, newsletter, news magazine, or business or financial  
3 publication of--general,--regular,--and-paid-circulation or  
4 service, whether communicated in hard copy form or by  
5 electronic means or otherwise, that does not consist of the  
6 rendering of advice on the basis of the specific investment  
7 situation of each client;

8 (e)(v) a person whose advice, analyses, or reports  
9 relate only to securities exempted by 30-10-104(1); or

10 (f)--a-person-who-has-no-place-of-business-in-this  
11 state-if-his-only-clients-in-this-state-are-other-investment  
12 advisers,--broker-dealers,--banks,--savings-institutions,--trust  
13 companies,--insurance--companies,--investment--companies--as  
14 defined-in-the-Investment-Company-Act-of--1940,--pension--or  
15 profit-sharing--trusts,--or--other-financial-institutions-or  
16 institutional-buyers,--whether-acting-for--themselves--or--as  
17 trustees;--or

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

21 (7) "Issuer" means any person who issues or proposes  
22 to issue any security, except that with respect to  
23 certificates of deposit, voting-trust certificates, or  
24 collateral-trust certificates or with respect to  
25 certificates of interest or shares in an unincorporated



1 investment trust not having a board of directors (or persons  
2 performing similar functions) or of the fixed, restricted  
3 management, or unit type, the term "issuer" means the person  
4 or persons performing the acts and assuming the duties of  
5 depositor or manager pursuant to the provisions of the trust  
6 or other agreement or instrument under which the security is  
7 issued.

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

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

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

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

22 (c) Any security given or delivered with or as a bonus  
23 on account of any purchase of securities or any other thing  
24 is considered to constitute part of the subject of the  
25 purchase and to have been offered and sold for value. A

1 purported gift of assessable stock is considered to involve  
2 an offer and sale. Every sale or offer of a warrant or right  
3 to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security  
5 which gives the holder a present or future right or  
6 privilege to convert into another security of the same or  
7 another issuer, is considered to include an offer of the  
8 other security.

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

14 (12) "Security" means any note; stock; treasury stock;  
15 bond; debenture; evidence of indebtedness; certificate of  
16 interest or participation in any profit-sharing agreement;  
17 collateral-trust certificate; preorganization certificate or  
18 subscription; transferable shares; investment contract;  
19 voting-trust certificate; certificate of deposit for a  
20 security; certificate of interest or participation in an  
21 oil, gas, or mining title or lease or in payments out of  
22 production under such a title or lease; or, in general, any  
23 interest or instrument commonly known as a security or any  
24 certificate of interest or participation in, temporary or  
25 interim certificate for, receipt for, guarantee of, or

1 warrant or right to subscribe to or purchase any of the  
 2 foregoing. "Security" does not include any insurance or  
 3 endowment policy or annuity contract under which an  
 4 insurance company promises to pay a sum of money either in a  
 5 lump sum or periodically for life or some other specified  
 6 period.

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

10 (14) "Transact", "transact business", or "transaction"  
 11 includes the meanings of the terms "sale", "sell", and  
 12 "offer".

13 Section 2. Section 30-10-104, MCA, is amended to read:  
 14 "30-10-104. Exempt securities. Sections 30-10-202  
 15 through 30-10-207 do not apply to any of the following  
 16 securities:

17 (1) any security (including a revenue obligation)  
 18 issued or guaranteed by the United States, any state, any  
 19 political subdivision of a state, or any agency or corporate  
 20 or other instrumentality of one or more of the foregoing;  
 21 provided, however, 30-10-202 through 30-10-207 apply to a  
 22 security issued by any of the foregoing that is payable  
 23 solely from payments to be received in respect of property  
 24 or money used under a lease, sale, or loan arrangement by or  
 25 for a nongovernmental industrial or commercial enterprise,

1 unless such enterprise or any security of which it is the  
 2 issuer is within any of the exemptions enumerated in  
 3 subsections (2) through ~~(9)~~ (13) of this section;

4 (2) any security issued or guaranteed by Canada, any  
 5 Canadian province, any political subdivision of any such  
 6 province, or any agency or corporate or other  
 7 instrumentality of one or more of the foregoing or any other  
 8 foreign government with which the United States currently  
 9 maintains diplomatic relations if the security is recognized  
 10 as a valid obligation by the issuer or guarantor;

11 (3) any security issued by and representing an  
 12 interest in or a debt of or guaranteed by any bank organized  
 13 under the laws of the United States or any bank, savings  
 14 institution, or trust company organized and supervised under  
 15 the laws of any state;

16 (4) any security issued by and representing an  
 17 interest in or a debt of or guaranteed by any federal  
 18 savings and loan association or any building and loan or  
 19 similar association organized under the laws of any state  
 20 and authorized to do business in this state;

21 ~~(5) any insurance or endowment policy or annuity~~  
 22 ~~contract or optional annuity contract issued by a~~  
 23 ~~corporation subject to the supervision of the insurance~~  
 24 ~~commissioner;~~

25 (6)(5) any security issued or guaranteed by any

1 federal credit union or any credit union, industrial loan  
2 association, or similar association organized and supervised  
3 under the laws of this state;

4 ~~(7)~~(6) any security issued or guaranteed by any  
5 railroad, other common carrier, public utility, or holding  
6 company which is:

7 (a) subject to the jurisdiction of the interstate  
8 commerce commission;

9 (b) a registered holding company under the Public  
10 Utility Holding Company Act of 1935 or a subsidiary of such  
11 a company within the meaning of that act;

12 (c) regulated in respect of its rates and charges by a  
13 governmental authority of the United States or any state or  
14 municipality; or

15 (d) regulated in respect to the issuance or guarantee  
16 of the security by a governmental authority of the United  
17 States, any state, Canada, or any Canadian province; also  
18 equipment trust certificates in respect to equipment  
19 conditionally sold or leased to a railroad or public utility  
20 if other securities issued by such railroad or public  
21 utility would be exempt under this subsection;

22 ~~(8)~~(7) any security that meets all of the following  
23 conditions:

24 (a) if the issuer is not organized under the laws of  
25 the United States or a state, it has appointed a duly

1 authorized agent in the United States for service of process  
2 and has set forth the name and address of such agent in its  
3 prospectus;

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

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

11 (i) principal, interest, dividend, or sinking fund  
12 installment on preferred stock or indebtedness for borrowed  
13 money; or

14 (ii) rentals under leases with terms of 3 years or  
15 more;

16 (d) the issuer has had consolidated net income (before  
17 extraordinary items and the cumulative effect of accounting  
18 changes) of at least \$1 million in 4 of its last 5 fiscal  
19 years, including its last fiscal year; and if the offering  
20 is of interest-bearing securities, has had for its last  
21 fiscal year such net income, but before deduction for income  
22 taxes and depreciation, of at least 1 1/2 times the issuer's  
23 annual interest expense, giving effect to the proposed  
24 offering and the intended use of the proceeds. "Last fiscal  
25 year" as used in this subsection ~~(8)~~(7)(d), means the

1 most recent year for which audited financial statements are  
 2 available, provided that such statements cover a fiscal  
 3 period ended not more than 15 months from the commencement  
 4 of the offering.

5 (e) if the offering is of stock or shares, other than  
 6 preferred stock or shares, such securities have voting  
 7 rights and such rights include the right to have at least as  
 8 many votes per share and the right to vote on at least as  
 9 many general corporate decisions as each of the issuer's  
 10 outstanding classes of stock or shares, except as otherwise  
 11 required by law;

12 (f) if the offering is of stock or shares, other than  
 13 preferred stock or shares, such securities are owned  
 14 beneficially or of record on any date within 6 months prior  
 15 to the commencement of the offering by at least 1,200  
 16 persons and on such date there are at least 750,000 such  
 17 shares outstanding with an aggregate market value, based on  
 18 the average bid price for that day, of at least \$3,750,000.  
 19 In connection with the determination of the number of  
 20 persons who are beneficial owners of the stock or shares of  
 21 an issuer, the issuer or broker-dealer may rely in good  
 22 faith for the purposes of this section upon written  
 23 information furnished by the record owners.

24 ~~(9)~~(8) any security issued by any person organized and  
 25 operated not for private profit but exclusively for

1 religious, educational, benevolent, charitable, fraternal,  
 2 social, athletic, or reformatory purposes if the issuer pays  
 3 a fee of \$50 and files with the commissioner 20 days prior  
 4 to the offering a written notice specifying the terms of the  
 5 offer and the commissioner does not disallow the exemption  
 6 in writing within such 20-day period;

7 ~~(10)~~(9) any commercial paper which arises out of a  
 8 current transaction or the proceeds of which have been or  
 9 are to be used for current transaction and which evidences  
 10 an obligation to pay cash within 9 months of the date of  
 11 issuance, exclusive of days of grace, or any renewal of such  
 12 paper which is likewise limited or any guarantee of such  
 13 paper or of any such renewal, when such commercial paper is  
 14 sold to the banks or insurance companies;

15 ~~(11)~~(10) any investment contract issued in connection  
 16 with an employee's stock purchase, savings, pension,  
 17 profit-sharing, or similar benefit plan;

18 ~~(12)~~(11) any security for which the commissioner  
 19 determines by order that an exemption would better serve the  
 20 purposes of 30-10-102 than would registration. The fee for  
 21 this exemption must be as prescribed in 30-10-209(4).

22 ~~(13)~~(12) any security listed or approved for listing  
 23 upon notice of issuance on the New York stock exchange, the  
 24 American stock exchange, the Pacific stock exchange, the  
 25 Midwest stock exchange, or any other stock exchange

1 registered with the federal securities and exchange  
 2 commission and approved by the commissioner; any other  
 3 security of the same issuer that is of senior or  
 4 substantially equal rank; any security called for by  
 5 subscription rights or warrants so listed or approved; or  
 6 any warrant or right to purchase or subscribe to any of the  
 7 foregoing;

8 ~~(14)~~(13) any national market system security listed or  
 9 approved for listing upon notice of issuance on the national  
 10 association of securities dealers automated quotation system  
 11 or any other national quotation system approved by the  
 12 commissioner; any other security of the same issuer that is  
 13 of senior or substantially equal rank; any security called  
 14 for by subscription rights or warrants so listed or  
 15 approved; or any warrant or right to purchase or subscribe  
 16 to any of the securities listed in this subsection."

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

18 "30-10-105. Exempt transactions. Except as in this  
 19 section expressly provided, 30-10-201 through 30-10-207  
 20 shall not apply to any of the following transactions:

21 (1) any nonissuer isolated transaction, whether  
 22 effected through a broker-dealer or not; A transaction is  
 23 presumed to be isolated if it is one of not more than three  
 24 transactions during the prior 12-month period.

25 (2) (a) any nonissuer distribution of an outstanding

1 security by a broker-dealer registered pursuant to 30-10-201  
 2 if:

3 (i) quotations for the securities to be offered or  
 4 sold (or the securities issuable upon exercise of any  
 5 warrant or right to purchase or subscribe to such  
 6 securities) are reported by the automated quotations system  
 7 operated by the national association of securities dealers,  
 8 inc., (NASDAQ) or by any other quotation system approved by  
 9 the commissioner by rule; or

10 (ii) the security has a fixed maturity or a fixed  
 11 interest or dividend provision and there has been no default  
 12 during the current fiscal year or within the 3 preceding  
 13 fiscal years, or during the existence of the issuer and any  
 14 predecessors if less than 3 years, in the payment of  
 15 principal, interest, or dividends on the security.

16 (b) The commissioner may by order deny or revoke the  
 17 exemption specified in subsection (2)(a) with respect to a  
 18 specific security. Upon the entry of such an order, the  
 19 commissioner shall promptly notify all registered  
 20 broker-dealers that it has been entered and of the reasons  
 21 therefor and that within 15 days of the receipt of a written  
 22 request the matter will be set down for hearing. If no  
 23 hearing is requested and none is ordered by the  
 24 commissioner, the order will remain in effect until it is  
 25 modified or vacated by the commissioner. If a hearing is

1 requested or ordered, the commissioner, after notice of and  
 2 opportunity for hearing to all interested persons, may  
 3 modify or vacate the order or extend it until final  
 4 determination. No order under this subsection may operate  
 5 retroactively. No person may be considered to have violated  
 6 parts 1 through 3 of this chapter by reason of any offer or  
 7 sale effected after the entry of an order under this  
 8 subsection if he sustains the burden of proof that he did  
 9 not know and in the exercise of reasonable care could not  
 10 have known of the order.

11 (3) any nonissuer transaction effected by or through a  
 12 registered broker-dealer pursuant to an unsolicited order or  
 13 offer to buy, but the commissioner may require that the  
 14 customer acknowledge upon a specified form that the sale was  
 15 unsolicited and that a signed copy of each form be preserved  
 16 by the broker-dealer for a specified period;

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

20 (5) any transaction by an executor, administrator,  
 21 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 22 or conservator in the performance of his official duties as  
 23 such;

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

1 chapter;

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

9 (8) (a) any transaction pursuant to an offer made in  
 10 this state directed by the offeror to not more than 10  
 11 persons (other than those designated in subsection (7))  
 12 during any period of 12 consecutive months, if:

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

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

22 (b) For the purpose of the exemption provided for in  
 23 subsection (8)(a), an offer to sell is made in this state,  
 24 whether or not the offeror or any of the offerees is then  
 25 present in this state, if the offer either originates from

1 this state or is directed by the offeror to this state and  
 2 received at the place to which it is directed (or at any  
 3 post office in this state in the case of a mailed offer).

4 (9) any offer or sale of a preorganization certificate  
 5 or subscription if:

6 (a) no commission or other remuneration is paid or  
 7 given directly or indirectly for soliciting any prospective  
 8 subscriber;

9 (b) the number of subscribers does not exceed 10; and

10 (c) no payment is made by any subscriber;

11 (10) any transaction pursuant to an offer to existing  
 12 security holders of the issuer, including persons who at the  
 13 time of the transaction are holders of convertible  
 14 securities, nontransferable warrants, or transferable  
 15 warrants exercisable within not more than 90 days of their  
 16 issuance, if:

17 (a) no commission or other remuneration (other than a  
 18 standby commission) is paid or given directly or indirectly  
 19 for soliciting any security holder in this state; or

20 (b) the issuer first files a notice specifying the  
 21 terms of the offer and the commissioner does not by order  
 22 disallow either (a) or (b) of this subsection;

23 (11) any offer (but not a sale) of a security for which  
 24 registration statements have been filed under both parts 1  
 25 through 3 of this chapter and the Securities Act of 1933 if

1 no ~~stop-order~~ or STOP, refusal, denial, suspension, or  
 2 revocation order is in effect and no public proceeding or  
 3 examination looking toward such an order is pending under  
 4 either law;

5 (12) any offer (but not a sale) of a security for which  
 6 a registration statement has been filed under parts 1  
 7 through 3 of this chapter and the commissioner in his  
 8 discretion does not disallow the offer in writing within 10  
 9 days of such filing;

10 (13) the issuance of any stock dividend, whether the  
 11 corporation distributing the dividend is the issuer of the  
 12 stock or not, if nothing of value is given by stockholders  
 13 for the distribution other than the surrender of a right to  
 14 a cash dividend where the stockholder can elect to take a  
 15 dividend in cash or stock;

16 (14) any transaction incident to a right of conversion  
 17 or a statutory or judicially approved reclassification,  
 18 recapitalization, reorganization, quasi-reorganization,  
 19 stock split, reverse stock split, merger, consolidation, or  
 20 sale of assets;

21 (15) any transaction in compliance with such rules as  
 22 the commissioner in his discretion may adopt to serve the  
 23 purposes of 30-10-102;--or. The commissioner may in his  
 24 discretion require that 30-10-201 through 30-10-207 apply to  
 25 any or all transactional exemptions adopted by rule.

1           (16) any transaction pursuant to the Montana Capital  
2 ~~Company Act, Title 90, Chapter 8, provided that a Montana~~  
3 ~~capital company must by a certified Montana capital company~~  
4 ~~as defined in 90-8-104, provided that such company first~~  
5 ~~file files~~ all disclosure documents, along with a consent to  
6 service of process, with the state securities commissioner.  
7 The commissioner may not charge a fee for the filing or  
8 deposit."

9           Section 4. Section 30-10-201, MCA, is amended to read:  
10          "30-10-201. Registration of broker-dealers, salesmen,  
11 and investment advisers. (1) It is unlawful for any person  
12 to transact business in this state as a broker-dealer or  
13 salesman, except in transactions exempt under 30-10-105,  
14 unless he is registered under parts 1 through 3 of this  
15 chapter.

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

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

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

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

1           (c) his only clients in this state are:  
2           (i) investment companies, as defined in the Investment  
3 Company Act of 1940, or insurance companies;  
4           (ii) other investment advisers;  
5           (iii) broker-dealers;  
6           (iv) banks;  
7           (v) trust companies;  
8           (vi) savings and loan associations;  
9           (vii) employee benefit plans with assets of not less  
10 than \$1 million;  
11           (viii) governmental agencies or instrumentalities,  
12 whether acting for themselves or as trustees with investment  
13 control; or  
14           (ix) other institutional investors as are designated by  
15 rule or order of the commissioner; OR  
16           (D) HE HAS NO PLACE OF BUSINESS IN THIS STATE AND  
17 DURING ANY 12 CONSECUTIVE MONTHS DOES NOT DIRECT BUSINESS  
18 COMMUNICATIONS IN THIS STATE IN ANY MANNER TO MORE THAN FIVE  
19 PRESENT OR PROSPECTIVE CLIENTS, OTHER THAN THOSE SPECIFIED  
20 IN SUBSECTION (3)(C), WHETHER OR NOT HE OR ANY OF THE  
21 PERSONS TO WHOM THE COMMUNICATIONS ARE DIRECTED ARE THEN  
22 PRESENT IN THIS STATE.

23           (4) A broker-dealer or a salesman, acting as an agent  
24 for an issuer or as an agent for a broker-dealer in the  
25 offer or sale of securities for an issuer, or an investment



1 adviser may apply for registration by filing an application  
 2 in such form as the commissioner prescribes and payment of  
 3 the fee prescribed in 30-10-209. ~~Except-for-persons-in--the~~  
 4 ~~employ-of-brokerage-firms-governed-by-the-regulations-of-the~~  
 5 ~~securities--and--exchange--commissioner--all-salesmen-must-be~~  
 6 ~~legal-residents-of-this-state-and-must-have-actually-resided~~  
 7 ~~in-this-state-for-a-period-of-at-least-1-year-next-prior--to~~  
 8 ~~the--date--of-application-for-registration--The-commissioner~~  
 9 ~~may, upon request and for good cause shown by an applicant,~~  
 10 ~~waive--the-residency-requirement.--Payment-of-the-waiver-fee~~  
 11 ~~shall-be-as-prescribed-in-30-10-209.~~ A salesman acting as  
 12 agent for an issuer or broker-dealer who is not currently in  
 13 compliance with the financial responsibility requirements  
 14 prescribed by the Securities Exchange Act of 1934 and by  
 15 regulations adopted under it, may, in the discretion of the  
 16 commissioner, be required to file with the commissioner a  
 17 bond of a surety company duly authorized to transact  
 18 business in this state. The bond shall be in an amount  
 19 determined by the commissioner, payable to the state of  
 20 Montana and conditioned upon the faithful compliance with  
 21 the provisions of parts 1 through 3 of this chapter, and  
 22 provide that upon failure to so comply, the salesman shall  
 23 be liable to any and all persons who may suffer loss by  
 24 reason thereof.

25 (5) The application shall contain whatever information

1 the commissioner requires. No registration application of a  
 2 broker-dealer, salesman, investment adviser, or investment  
 3 adviser representative may be withdrawn before the  
 4 commissioner approves or denies such registration, without  
 5 the express written consent of the commissioner.

6 (6) When the registration requirements are complied  
 7 with met, the commissioner shall ~~approve-the-registration,~~  
 8 ~~make the registration effective. No effective registration~~  
 9 ~~of a broker-dealer, salesman, investment adviser, or~~  
 10 ~~investment adviser representative may be withdrawn without~~  
 11 ~~the express written consent of the commissioner.~~

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

22 (8) Registration of a broker-dealer, salesman, or  
 23 investment adviser may be renewed by filing, prior to the  
 24 expiration thereof, an application containing such  
 25 information as the commissioner may require to indicate any

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

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

24 (10) The commissioner may by order deny, suspend, or  
 25 revoke registration of any broker-dealer, salesman, or

1 investment adviser if he finds that the order is in the  
 2 public interest and that the applicant or registrant or, in  
 3 the case of a broker-dealer or investment adviser, any  
 4 partner, officer, or director:

5 (a) has filed an application for registration under  
 6 this section which, as of its effective date or as of any  
 7 date after filing in the case of an order denying  
 8 effectiveness, was incomplete in any material respect or  
 9 contained any statement which was, in the light of the  
 10 circumstances under which it was made, false or misleading  
 11 with respect to any material fact;

12 (b) has willfully violated or willfully failed to  
 13 comply with any provision of parts 1 through 3 of this  
 14 chapter or a predecessor law or any rule or order under  
 15 parts 1 through 3 of this chapter or a predecessor law;

16 (c) has been convicted of any misdemeanor involving a  
 17 security or any aspect of the securities business or any  
 18 felony;

19 (d) is permanently or temporarily enjoined by any  
 20 court of competent jurisdiction from engaging in or  
 21 continuing any conduct or practice involving any aspect of  
 22 the securities business;

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

1 (f) is the subject of an order entered within the past  
 2 5 years by the securities administrator of any other state  
 3 or by the federal securities and exchange commission denying  
 4 or revoking registration as a broker-dealer, salesman, or  
 5 investment adviser or the substantial equivalent of those  
 6 terms as defined in parts 1 through 3 of this chapter or is  
 7 the subject of an order of the federal securities and  
 8 exchange commission suspending or expelling him from a  
 9 national securities exchange or national securities  
 10 association registered under the Securities Exchange Act of  
 11 1934 or is the subject of a United States post office fraud  
 12 order, but:

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

16 (ii) he may not enter any order under this subsection  
 17 (f) on the basis of an order unless that order was based on  
 18 facts which would currently constitute a ground for an order  
 19 under this section; adjudication or determination, within  
 20 the past 5 years, by a securities or commodities agency or  
 21 administrator of another state or a court of competent  
 22 jurisdiction, that the person has violated the Securities  
 23 Act of 1933, the Securities Exchange Act of 1934, the  
 24 Investment Advisors Act of 1940, the Investment Company Act  
 25 of 1940, or the Commodity Exchange Act or the securities or

1 commodities law of any other state;

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

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

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

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

18 (k) has failed to reasonably supervise his salesmen or  
 19 employees, if he is a broker-dealer, or his investment  
 20 adviser representatives or employees, if he is an investment  
 21 adviser, to assure their compliance with this act.

22 (l) The commissioner may not institute a suspension or  
 23 revocation proceeding on the basis of a fact or transaction  
 24 known to him when registration became effective unless the  
 25 proceeding is instituted within 30 days after the date on

1 which the registration became effective.

2 (12) The commissioner may by order summarily postpone  
3 or suspend registration pending final determination of any  
4 proceeding under this section.

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

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

1 reasonable search, the commissioner may by order cancel the  
2 registration or application.

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

22 Section 5. Section 30-10-204, MCA, is amended to read:  
23 "30-10-204. Registration by coordination. (1) Any  
24 security for which a registration statement has been filed  
25 under the Securities Act of 1933 or any securities for which

1 filings have been made pursuant to regulation A or  
 2 regulation E, and amendments thereto, of the general rules  
 3 and regulations of the United States securities and exchange  
 4 commission, adopted pursuant to subsection (b) of section 3  
 5 of said Securities Act of 1933, in connection with the same  
 6 offering, may be registered by coordination. A registration  
 7 statement under this section shall contain the following  
 8 information and be accompanied by the following documents,  
 9 in addition to payment of the registration fee prescribed in  
 10 30-10-209:

11 (a) ~~three---copies~~ one copy of the prospectus or  
 12 offering circular and letter of notification filed under the  
 13 Securities Act of 1933 or the general rules and regulations  
 14 thereunder, together with all amendments thereto;

15 (b) the amount of securities to be offered in this  
 16 state;

17 (c) the states in which a registration statement or  
 18 similar document in connection with the offering has been or  
 19 is expected to be filed;

20 (d) any adverse order, judgment, or decree previously  
 21 entered in connection with the offering by any court or the  
 22 securities and exchange commission;

23 (e) if the commissioner by rule or otherwise requires,  
 24 a copy of the articles of incorporation and bylaws (or their  
 25 substantial equivalents) currently in effect, a copy of any

1 agreements with or among underwriters, a copy of any  
 2 indenture or other instrument governing the issuance of the  
 3 security to be registered, and a specimen or copy of the  
 4 security;

5 (f) if the commissioner requests, any other  
 6 information, or copies of any other documents, filed under  
 7 the Securities Act of 1933;

8 (g) an undertaking to forward promptly all amendments  
 9 to the federal registration statement or offering circular  
 10 and letter of notification, other than an amendment which  
 11 merely delays the effective date;

12 (h) a consent to service of process meeting the  
 13 requirements of 30-10-208; and

14 (i) such other information as the commissioner may  
 15 require.

16 (2) A registration statement by coordination under  
 17 this section automatically becomes effective at the moment  
 18 the federal registration statement or other filing becomes  
 19 effective if all the following conditions are satisfied:

20 (a) no stop order is in effect and no proceeding is  
 21 pending under 30-10-207;

22 (b) the registration statement has been on file with  
 23 the commissioner for at least 10 business days; and

24 (c) a statement of the maximum and minimum proposed  
 25 offering prices and the maximum underwriting discounts and

1 commissions has been on file for 2 business days or such  
2 shorter period as the commissioner permits by rule or  
3 otherwise and the offering is made within those limitations.

4 (3) The registrant shall promptly notify the  
5 commissioner of the date and time when the federal  
6 registration statement or other filings became effective and  
7 the content of the price amendment, if any, and shall  
8 promptly file a posteffective amendment containing the  
9 information and documents in the price amendment. "Price  
10 amendment" means the final federal amendment which includes  
11 a statement of the offering price, underwriting and selling  
12 discounts or commissions, amount of proceeds, conversion  
13 rates, call prices, and other matters dependent upon the  
14 offering price.

15 (4) Upon failure to receive the required notification  
16 and posteffective amendment with respect to the price  
17 amendment referred to in subsection (2) of this section, the  
18 commissioner may enter a stop denial order, without notice  
19 or hearing, retroactively denying effectiveness to the  
20 registration statement or suspending its effectiveness until  
21 compliance with subsection (2) of this section, if he  
22 promptly notifies the registrant of the issuance of the  
23 order. If the registrant proves compliance with the  
24 requirements as to notice and posteffective amendment, the  
25 stop denial order is void as of the time of its entry. The

1 commissioner may by rule or otherwise waive either or both  
2 of the conditions specified in subsections (2)(b) and (2)(c)  
3 of this section. If the federal registration statement or  
4 other filing becomes effective before all these conditions  
5 are satisfied and they are not waived, the registration  
6 statement automatically becomes effective as soon as all  
7 conditions are satisfied. If the registrant advises the  
8 commissioner of the date when the federal registration  
9 statement or other filing is expected to become effective  
10 the commissioner shall promptly advise the registrant  
11 whether all the conditions are satisfied and whether he then  
12 contemplates the institution of a proceeding under  
13 30-10-207; but this advice by the commissioner does not  
14 preclude the institution of such a proceeding at any time."

15 Section 6. Section 30-10-206, MCA, is amended to read:  
16 "30-10-206. General provisions regarding registration  
17 of securities. (1) A registration statement may be filed by  
18 the issuer, any other person on whose behalf the offering is  
19 to be made, or a registered broker-dealer. Any document  
20 filed under parts 1 through 3 of this chapter or a  
21 predecessor law within 5 3 years preceding the filing of a  
22 registration statement may be incorporated by reference in  
23 the registration statement to the extent that the document  
24 is currently accurate. The commissioner may by rule or  
25 otherwise permit the omission of any item of information or

1 document from any registration statement.

2 (2) (a) The commissioner may require as a condition of  
3 registration by qualification or coordination:

4 (i) that any security issued within the past 3 years  
5 or to be issued to a promoter for a consideration  
6 substantially different from the public offering price, or  
7 to any person for a consideration other than cash, be  
8 deposited in escrow; and

9 (ii) that the proceeds from the sale of the registered  
10 security in this state be impounded until the issuer  
11 receives a specified amount from the sale of the security  
12 either in this state or elsewhere.

13 (b) The commissioner may determine the conditions of  
14 any escrow or impounding required hereunder, but he may not  
15 reject a depository solely because of location in another  
16 state.

17 (3) When securities are registered by notification,  
18 coordination, or qualification, they may be offered and sold  
19 by the issuer, any other person on whose behalf they are  
20 registered, or by any registered broker-dealer. Every  
21 registration shall remain effective for a period of 1 year  
22 unless it is revoked by the commissioner, terminated upon  
23 request of the registrant with the consent of the  
24 commissioner, or renewed under 30-10-209(1)(b); however,  
25 said registration shall be automatically suspended upon a

1 stop order or suspension proceedings being instituted by the  
2 securities and exchange commission relative to said  
3 securities and shall continue suspended so long as such  
4 proceedings are pending and until the registration or filing  
5 with the securities and exchange commission is effective.  
6 All outstanding securities of the same class as a currently  
7 registered security are considered to be registered for the  
8 purpose of any nonissuer transaction. A registration  
9 statement which has become effective may not be withdrawn  
10 for 1 year from its effective date if any securities of the  
11 same class are outstanding.

12 (4) The commissioner may require the person who filed  
13 the registration statement to file reports to keep  
14 reasonably current the information contained in the  
15 registration statement and to disclose the progress of the  
16 offering with respect to registered securities which:

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

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

23 (5) No securities registration statement may be  
24 withdrawn, whether or not such statement has become  
25 effective, without the express written consent of the

1 commissioner."

2 Section 7. Section 30-10-207, MCA, is amended to read:

3 "30-10-207. Denial, suspension, and revocation of  
4 registration of securities. (1) The commissioner may issue  
5 an order denying effectiveness to, or suspending or revoking  
6 the effectiveness of, any registration statement if he finds  
7 that the order is in the public interest and that:

8 (a) the registration statement, as of its effective  
9 date or as of any earlier date in the case of an order  
10 denying effectiveness, is incomplete in any material respect  
11 or contains any statement which was, in the light of the  
12 circumstances under which it was made, false or misleading  
13 with respect to any material fact;

14 (b) any provision of parts 1 through 3 of this chapter  
15 or any rule, order, or condition lawfully imposed under  
16 parts 1 through 3 of this chapter has been willfully  
17 violated, in connection with the offering, by:

- 18 (i) the person filing the registration statement;  
19 (ii) the issuer, any partner, officer, or director of  
20 the issuer, any person occupying a similar status or  
21 performing similar functions, or any person directly or  
22 indirectly controlling or controlled by the issuer, but only  
23 if the person filing the registration statement is directly  
24 or indirectly controlled by or acting for the issuer; or  
25 (iii) any underwriter;

1 (c) the security registered or sought to be registered  
2 is the subject of a permanent or temporary injunction of any  
3 court of competent jurisdiction entered under any other  
4 federal or state law applicable to the offering, but:

5 (i) the commissioner may not institute a proceeding  
6 against an effective registration statement under this  
7 subsection (c) more than 1 year from the date of the  
8 injunction relied on; and

9 (ii) he may not enter an order under this subsection  
10 (c) on the basis of an injunction entered under any other  
11 state law unless that order or injunction was based on facts  
12 which would currently constitute a ground for an order under  
13 this section;

14 (d) the issuer's enterprise or method of business  
15 includes or would include activities which are illegal where  
16 performed;

17 (e) the offering has worked or tended to work a fraud  
18 upon purchasers or would so operate;

19 (f) when a security is sought to be registered by  
20 notification, it is not eligible for such registration;

21 (g) when a security is sought to be registered by  
22 coordination, there has been a failure to comply with the  
23 undertaking required by 30-10-204(1)(g);

24 (h) the applicant or registrant has failed to pay the  
25 proper registration fee, but the commissioner may enter only



1 a denial order under this subsection, and he shall vacate  
2 any such order when the deficiency has been corrected; or

3 (i) the offering has been or would be made with  
4 unreasonable amounts of underwriters' and sellers'  
5 discounts, commissions, or other compensation, or promoters'  
6 profits or participation, or unreasonable amounts or kinds  
7 of options.

8 (2) The commissioner may not enter a stop suspension  
9 or revocation order against an effective registration  
10 statement on the basis of a fact or transaction known to him  
11 when the registration statement became effective.

12 (3) Upon the entry of an order under subsection (1) of  
13 this section, the commissioner shall promptly notify the  
14 issuer of the securities and the applicant or registrant  
15 that an order has been entered and of the reasons therefor  
16 and that, if requested by the issuer or registrant within 15  
17 days after the receipt of the commissioner's notification,  
18 the matter will be set promptly down for hearing. If no  
19 hearing is requested within 15 days and none is ordered by  
20 the commissioner, the order will remain in effect until it  
21 is modified or vacated by the commissioner. If a hearing is  
22 requested or ordered, the commissioner, after notice of and  
23 opportunity for hearing, may affirm, modify, or vacate the  
24 order."

25 Section 8. 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, the fee shall be  
 11 \$50 for original registration with each employer, \$50 for  
 12 each annual renewal, and \$50 for each transfer.

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

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

21 ~~{5}--For--waiver--of--the--residency--requirement--of~~  
 22 ~~30-10-201{4},--the--fee--shall--be--\$50--for--each--original~~  
 23 ~~registration.~~

24 {6}{5} All fees are considered fully earned when  
 25 received. In the event of overpayment, only those amounts in

1 excess of \$10 may be refunded.

2 {7}{6} All fees, examination charges, and  
 3 miscellaneous charges, except fines or penalties, collected  
 4 by the commissioner pursuant to parts 1 through 3 of this  
 5 chapter and the rules adopted hereunder must be deposited  
 6 into the securities regulatory trust account, pursuant to  
 7 30-10-115 through 30-10-118.

8 {8}{7} All fines and penalties collected by the  
 9 commissioner pursuant to parts 1 through 3 of this chapter  
 10 and the rules adopted hereunder must be deposited into the  
 11 general fund."

12 Section 9. Section 30-10-301, MCA, is amended to read:

13 "30-10-301. Fraudulent and other prohibited practices.

14 (1) It is unlawful for any person, in connection with the  
 15 offer, sale, or purchase of any security, directly or  
 16 indirectly, in, into, or from this state, to:

17 (a) employ any device, scheme, or artifice to defraud;

18 (b) make any untrue statement of a material fact or  
 19 omit to state a material fact necessary in order to make the  
 20 statements made, in the light of the circumstances under  
 21 which they are made, not misleading; or

22 (c) engage in any act, practice, or course of business  
 23 which operates or would operate as a fraud or deceit upon  
 24 any person.

25 (2) (a) It is unlawful for any person who receives,

1 directly or indirectly, any consideration from another  
 2 person primarily for advising the other person as to the  
 3 value of securities or their purchase or sale, whether  
 4 through the issuance of analysis or reports or otherwise,  
 5 to:

6 (a)(i) to employ any device, scheme, or artifice to  
 7 defraud the other person; or

8 (b)(ii) to engage in any act, practice, or course of  
 9 business which operates or would operate as a fraud or  
 10 deceit upon the other person; or

11 (iii) without disclosing to the client in writing  
 12 before the completion of the transaction the capacity in  
 13 which he is acting and obtaining the consent of the client  
 14 to the transaction;

15 (A) acting as principal for his own account, to  
 16 knowingly sell any security to or purchase any security from  
 17 a client; or

18 (B) acting as agent for a person other than such  
 19 client, to knowingly effect the sale or purchase of any  
 20 security for the account of such client.

21 (b) The prohibitions of subsection (2)(a)(iii) do not  
 22 apply to any transaction with a customer of a broker-dealer  
 23 if the broker-dealer is not being compensated for rendering  
 24 investment advice in relation to such transaction.

25 (3) In the solicitation of advisory clients, it is

1 unlawful for a person to:

2 (a) make a false statement of a material fact; or

3 (b) omit a material fact necessary to make a statement  
 4 not misleading in light of the circumstances under which it  
 5 is made.

6 (3)(4) It Except as permitted by rule or order of the  
 7 commissioner, it is unlawful for any investment adviser to  
 8 enter into, extend, or renew any investment advisory  
 9 contract unless it provides in writing that:

10 (a) the investment adviser shall not be compensated on  
 11 the basis of a share of capital gains upon or capital  
 12 appreciation of the funds or any portion of the funds of the  
 13 client;

14 (b) no assignment of the contract may be made by the  
 15 investment adviser without the consent of the other party to  
 16 the contract; and

17 (c) the investment adviser, if a partnership, shall  
 18 notify the other party to the contract of any change in the  
 19 membership of the partnership within a reasonable time after  
 20 the change.

21 (5) Subsection (4)(a) does not prohibit an investment  
 22 advisory contract which provides for compensation based upon  
 23 the total value of a fund averaged over a definite period or  
 24 as of definite dates or taken as of a definite date.  
 25 "Assignment", as used in subsection (4)(b), includes any

1 direct or indirect transfer or hypothecation of an  
 2 investment advisory contract by the assignor or of a  
 3 controlling block of the assignor's outstanding voting  
 4 securities by a security holder of the assignor; but if the  
 5 investment adviser is a partnership, no assignment of an  
 6 investment advisory contract is considered to result from  
 7 the death or withdrawal of a minority of the members of the  
 8 investment adviser having only a minority interest in the  
 9 business of the investment adviser or from the admission to  
 10 the investment adviser of one or more members who, after  
 11 admission, will be only a minority of the members and will  
 12 have only a minority interest in the business.

13 (6) It is unlawful for an investment adviser to take  
 14 or have custody of any securities or funds of any client if:

15 (a) the commissioner by rule prohibits such custody;  
 16 or

17 (b) in the absence of rule, the investment adviser  
 18 fails to notify the commissioner that he has or may have  
 19 such custody."

20 Section 10. Section 30-10-304, MCA, is amended to  
 21 read:

22 "30-10-304. Investigations and subpoenas. (1) The  
 23 commissioner in his discretion may:

24 (a) make such public or private investigations or  
 25 examinations within or without this state as he deems

1 necessary to determine whether any registration should be  
 2 granted, denied, or revoked or whether any person has  
 3 violated or is about to violate any provision of parts 1  
 4 through 3 of this chapter or any rule or order hereunder or  
 5 to aid in the enforcement of parts 1 through 3 of this  
 6 chapter or in the prescribing of rules and forms hereunder;

7 (b) require or permit any person to file a statement  
 8 in writing, under oath or otherwise as the commissioner may  
 9 determine, as to all the facts and circumstances concerning  
 10 the matter to be investigated; and

11 (c) publish information concerning any violation of  
 12 parts 1 through 3 of this chapter or any rule or order  
 13 hereunder.

14 (2) (a) For the purpose of any investigation or  
 15 proceeding under parts 1 through 3 of this chapter, the  
 16 commissioner or any officer designated by him may administer  
 17 oaths and affirmations, subpoena witnesses, compel their  
 18 attendance, take evidence, and require the production of any  
 19 books, papers, correspondence, memoranda, agreements, or  
 20 other documents or records which the commissioner deems  
 21 relevant or material to the inquiry.

22 (b) The commissioner may issue and apply to enforce  
 23 subpoenas in this state at the request of a securities  
 24 agency or administrator of another state if the activities  
 25 constituting an alleged violation for which the information

1 is sought would be a violation of the Securities Act of  
2 Montana if the activities had occurred in this state.

3 (3) In case of contumacy by or refusal to obey a  
4 subpoena issued to any person, any court of competent  
5 jurisdiction, upon application by the commissioner, may  
6 issue to that person an order requiring him to appear before  
7 the commissioner or the officer designated by him, there to  
8 produce documentary evidence if so ordered or to give  
9 evidence touching the matter under investigation or in  
10 question. Any failure to obey the order of the court may be  
11 punished by the court as a contempt of court.

12 (4) No person is excused from attending and testifying  
13 or from producing any document or record before the  
14 commissioner or in obedience to the subpoena of the  
15 commissioner or any officer designated by him, or in any  
16 proceeding instituted by the commissioner, on the ground  
17 that the testimony or evidence (documentary or otherwise)  
18 required of him may tend to incriminate him or subject him  
19 to a penalty or forfeiture; but no compelled testimony or  
20 evidence or any information directly or indirectly derived  
21 from such testimony or evidence may be used against the  
22 witness in any criminal case. Nothing in this section  
23 prohibits the commissioner from granting immunity from  
24 prosecution for or on account of any transaction, matter, or  
25 thing concerning which a witness is compelled to testify if

1 the commissioner determines, in his sole discretion, that  
2 the ends of justice would be served thereby. Immunity may  
3 not extend to prosecution or punishment for false statements  
4 given pursuant to the subpoena."

5 Section 11. Section 30-10-307, MCA, is amended to  
6 read:

7 "30-10-307. Civil liabilities. (1) Any person who  
8 offers or sells a security in violation of ~~any provisions~~ of  
9 30-10-202 through ~~30-10-205~~ or offers or sells a security by  
10 means of fraud or misrepresentation is liable to the person  
11 buying the security from him, who may sue either at law or  
12 in equity to recover the consideration paid for the  
13 security, together with interest at 10% per annum from the  
14 date of payment, costs, and reasonable attorneys' fees, less  
15 the amount of any income received on the security, upon the  
16 tender of the security, or for damages if he no longer owns  
17 the security. Damages are the amount that would be  
18 recoverable upon a tender less:

19 (a) the value of the security when the buyer disposed  
20 of it; and

21 (b) interest at 10% per annum from the date of  
22 disposition.

23 (2) Every person who directly or indirectly controls a  
24 seller liable under subsection (1), every partner, officer,  
25 or director (or person occupying a similar status or

1 performing similar functions) or employee of such a seller,  
 2 and every broker-dealer or salesman who participates or  
 3 materially aids in the sale is liable jointly and severally  
 4 with and to the same extent as the seller if the nonseller  
 5 knew, or in the exercise of reasonable care could have  
 6 known, of the existence of the facts by reason of which the  
 7 liability is alleged to exist. There shall be contribution  
 8 among the several persons so liable.

9 (3) Any tender specified in this section may be made  
 10 at any time before entry of judgment. A cause of action  
 11 under this statute survives the death of any person who  
 12 might have been a plaintiff or a defendant. No person may  
 13 sue under this section:

14 (a) if the buyer has received a written offer, at a  
 15 time when he owned the security, to refund the consideration  
 16 paid, together with interest at 10% per annum from the date  
 17 of payment, less the amount of any income received on the  
 18 security and he failed to accept the offer within 30 days of  
 19 its receipt; or

20 (b) if the buyer has received a written offer at a  
 21 time when he did not own the security in the amount that  
 22 would be recoverable under subsection (1) upon a tender  
 23 less:

24 (i) the value of the security when the buyer disposed  
 25 of it; and

1 (ii) interest at 10% per annum from the date of  
 2 disposition.

3 (4) No person who has made or engaged in the  
 4 performance of any contract in violation of any provision of  
 5 parts 1 through 3 of this chapter or any rule or order  
 6 hereunder or who has acquired any purported right under any  
 7 such contract with knowledge of the facts by reason of which  
 8 its making or performance was in violation may base any suit  
 9 on the contract. Any condition, stipulation, or provision  
 10 binding any person acquiring any security to waive  
 11 compliance with any provision of parts 1 through 3 of this  
 12 chapter or any rule or order hereunder is void as against  
 13 public policy and in the public interest."

14 Section 12. Section 90-8-304, MCA, is amended to read:  
 15 "90-8-304. Application of securities law. In lieu of  
 16 registration under Title 30, chapter 10, a certified Montana  
 17 capital company may file all disclosure documents, along  
 18 with a consent to service of process, with the state  
 19 securities commissioner. The commissioner may not charge a  
 20 fee for such filing or deposit."

21 NEW SECTION. Section 13. Coordination instruction. If  
 22 \_\_Bill No. \_\_ [LC 1053] is not passed and approved, section 4  
 23 of this act, amending 30-10-201, is amended so that  
 24 30-10-201(5) and (6) read as follows:

25 "(5) The application shall contain whatever

1 information the commissioner requires. No registration  
2 application of a broker-dealer, salesman, or investment  
3 adviser may be withdrawn before the commissioner approves or  
4 denies such registration, without the express written  
5 consent of the commissioner.

6 (6) When the registration requirements are complied  
7 with met, the commissioner shall ~~approve--the--registration--~~  
8 make the registration effective. No effective registration  
9 of a broker-dealer, salesman, or investment adviser may be  
10 withdrawn without the express written consent of the  
11 commissioner."

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

16 NEW SECTION. Section 15. Effective date. This act is  
17 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 12

19 87

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

report SENATE BILL NO. 247

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

*Les Kitse*

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

~~Page 20, line 15~~ Strike: " ~~or~~ "

1) Page 20, line 15  
Following: "commissioner"  
Insert: "; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (c), whether or not he or any of the persons to whom the communications are directed is then present in this state."

Rep. Ray Brandewie will sponsor

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reading copy ( )