

SENATE BILL NO. 27
INTRODUCED BY MEYER
BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

JANUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 9, 1989	PRINTING REPORT.
JANUARY 10, 1989	SECOND READING, DO PASS.
JANUARY 11, 1989	ENGROSSING REPORT.
JANUARY 12, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 12, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 87; NOES, 6.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 8, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 10, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 27
2 INTRODUCED BY MEYER
3 BY REQUEST OF THE STATE AUDITOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS
7 30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305,
8 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 **Section 1.** Section 30-10-103, MCA, is amended to read:
12 "30-10-103. Definitions. When used in parts 1 through
13 3 of this chapter, unless the context requires otherwise,
14 the following definitions apply:
15 (1) "Commissioner" means securities commissioner of
16 this state.
17 (2) "Salesman" means any individual other than a
18 broker-dealer who represents a broker-dealer or issuer in
19 effecting or attempting to effect sales of securities. A
20 partner, officer, or director of a broker-dealer or issuer
21 is a salesman only if he otherwise comes within this
22 definition. "Salesman" does not include an individual who
23 represents an issuer in:
24 (a) effecting a transaction in a security exempted by
25 subsections (1), (2), (3), (8), (9), (10), or (11) of

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

1 byproduct;

2 (ii) any metal or mineral, including a precious metal,
3 or any gem or gem stone, whether characterized as precious,
4 semiprecious, or otherwise;

5 (iii) any fuel, whether liquid, gaseous, or otherwise;

6 (iv) foreign currency; and

7 (v) all other goods, articles, products, or items of
8 any kind.

9 (b) Commodity does not include:

10 (i) a numismatic coin with a fair market value at
11 least 15% higher than the value of the metal it contains;

12 (ii) real property or any timber, agricultural, or
13 livestock product grown or raised on real property and
14 offered and sold by the owner or lessee of such real
15 property; or

16 (iii) any work of art offered or sold by an art dealer
17 at public auction or offered or sold through a private sale
18 by the owner.

19 (6) "Commodity Exchange Act" means the federal statute
20 of that name as amended on the effective date of this
21 subsection.

22 (7) "Commodity futures trading commission" means the
23 independent regulatory agency established by congress to
24 administer the Commodity Exchange Act.

25 (8) (a) "Commodity investment contract" means any

1 account, agreement, or contract for the purchase or sale,
2 primarily for speculation or investment purposes and not for
3 use or consumption by the offeree or purchaser, of one or
4 more commodities, whether for immediate or subsequent
5 delivery or whether delivery is intended by the parties, and
6 whether characterized as a cash contract, deferred shipment
7 or deferred delivery contract, forward contract, futures
8 contract, installment or margin contract, leverage contract,
9 or otherwise. Any commodity investment contract offered or
10 sold, in the absence of evidence to the contrary, is
11 presumed to be offered or sold for speculation or investment
12 purposes.

13 (b) A commodity investment contract does not include a
14 contract or agreement that requires, and under which the
15 purchaser receives, within 28 calendar days after the
16 payment in good funds of any portion of the purchase price,
17 physical delivery of the total amount of each commodity to
18 be purchased under the contract or agreement.

19 (9) (a) "Commodity option" means any account,
20 agreement, or contract giving a party to the account,
21 agreement, or contract the right but not the obligation to
22 purchase or sell one or more commodities or one or more
23 commodity contracts, whether characterized as an option,
24 privilege, indemnity, bid, offer, put, call, advance
25 guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

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

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

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

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

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

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

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

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

1 (iv) supervises employees who perform any of the
2 foregoing.

3 (b) Investment adviser representative does not include
4 an individual registered as a salesman pursuant to
5 30-10-201.

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

18 (14) "Nonissuer" means not directly or indirectly for
19 the benefit of the issuer.

20 (15) "Person", for the purpose of parts 1 through 3 of
21 this chapter, means an individual, a corporation, a
22 partnership, an association, a joint-stock company, a trust
23 where the interests of the beneficiaries are evidenced by a
24 security, an unincorporated organization, a government, or a
25 political subdivision of a government.

1 (16) "Precious metal" means the following, in coin,
2 bullion, or other form:

3 (a) silver;

4 (b) gold;

5 (c) platinum;

6 (d) palladium;

7 (e) copper; and

8 (f) such other items as the commissioner may by rule
9 or order specify.

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

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

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

1 another issuer, is considered to include an offer of the
2 other security.

3 (18) "Securities Act of 1933", "Securities Exchange Act
4 of 1934", "Public Utility Holding Company Act of 1935",
5 "Investment Advisors Act of 1940", and "Investment Company
6 Act of 1940" mean the federal statutes of those names as
7 amended before or after July 1, 1961.

8 (19) "Security" means any note; stock; treasury stock;
9 bond; commodity investment contract; commodity option;
10 debenture; evidence of indebtedness; certificate of interest
11 or participation in any profit-sharing agreement;
12 collateral-trust certificate; preorganization certificate or
13 subscription; transferable shares; investment contract;
14 voting-trust certificate; certificate of deposit for a
15 security; certificate of interest or participation in an
16 oil, gas, or mining title or lease or in payments out of
17 production under such a title or lease; or, in general, any
18 interest or instrument commonly known as a security or any
19 certificate of interest or participation in, temporary or
20 interim certificate for, receipt for, guarantee of, or
21 warrant or right to subscribe to or purchase any of the
22 foregoing. "Security" does not include any insurance or
23 endowment policy or annuity contract under which an
24 insurance company promises to pay a sum of money either in a
25 lump sum or periodically for life or some other specified

1 period.

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

5 (21) "Transact", "transact business", or "transaction"
6 includes the meanings of the terms "sale", "sell", and
7 "offer".

8 **Section 2.** Section 30-10-104, MCA, is amended to read:
9 "30-10-104. Exempt securities. Sections 30-10-202
10 through 30-10-207 do not apply to any of the following
11 securities:

12 (1) any security (including a revenue obligation)
13 issued or guaranteed by the United States, any state, any
14 political subdivision of a state, or any agency or corporate
15 or other instrumentality of one or more of the foregoing;
16 provided, however, 30-10-202 through 30-10-207 apply to a
17 security issued by any of the foregoing that is payable
18 solely from payments to be received in respect of property
19 or money used under a lease, sale, or loan arrangement by or
20 for a nongovernmental industrial or commercial enterprise,
21 unless such enterprise or any security of which it is the
22 issuer is within any of the exemptions enumerated in
23 subsections (2) through (13) of this section;

24 (2) any security issued or guaranteed by Canada, any
25 Canadian province, any political subdivision of any such

1 province, or any agency or corporate or other
2 instrumentality of one or more of the foregoing or any other
3 foreign government with which the United States currently
4 maintains diplomatic relations if the security is recognized
5 as a valid obligation by the issuer or guarantor;

6 (3) any security issued by and representing an
7 interest in or a debt of or guaranteed by any bank organized
8 under the laws of the United States or any bank, savings
9 institution, or trust company organized and supervised under
10 the laws of any state;

11 (4) any security issued by and representing an
12 interest in or a debt of or guaranteed by any federal
13 savings and loan association or any building and loan or
14 similar association organized under the laws of any state
15 and authorized to do business in this state;

16 (5) any security issued or guaranteed by any federal
17 credit union or any credit union, industrial loan
18 association, or similar association organized and supervised
19 under the laws of this state;

20 (6) any security issued or guaranteed by any railroad,
21 other common carrier, public utility, or holding company
22 which is:

23 (a) subject to the jurisdiction of the interstate
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a
4 governmental authority of the United States or any state or
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee
7 of the security by a governmental authority of the United
8 States, any state, Canada, or any Canadian province; also
9 equipment trust certificates in respect to equipment
10 conditionally sold or leased to a railroad or public utility
11 if other securities issued by such railroad or public
12 utility would be exempt under this subsection;

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

15 (a) if the issuer is not organized under the laws of
16 the United States or a state, it has appointed a duly
17 authorized agent in the United States for service of process
18 and has set forth the name and address of such agent in its
19 prospectus;

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

24 (c) neither the issuer nor a significant subsidiary
25 has had a material default during the last 7 years (or the

1 issuer's existence if less than 7 years) in the payment of:

2 (i) principal, interest, dividend, or sinking fund
3 installment on preferred stock or indebtedness for borrowed
4 money; or

5 (ii) rentals under leases with terms of 3 years or
6 more;

7 (d) the issuer has had consolidated net income (before
8 extraordinary items and the cumulative effect of accounting
9 changes) of at least \$1 million in 4 of its last 5 fiscal
10 years, including its last fiscal year; and if the offering
11 is of interest-bearing securities, has had for its last
12 fiscal year such net income, but before deduction for income
13 taxes and depreciation, of at least 1 1/2 times the issuer's
14 annual interest expense, giving effect to the proposed
15 offering and the intended use of the proceeds. "Last fiscal
16 year" as used in this subsection (7)(d), means the most
17 recent year for which audited financial statements are
18 available, provided that such statements cover a fiscal
19 period ended not more than 15 months from the commencement
20 of the offering.

21 (e) if the offering is of stock or shares, other than
22 preferred stock or shares, such securities have voting
23 rights and such rights include the right to have at least as
24 many votes per share and the right to vote on at least as
25 many general corporate decisions as each of the issuer's

1 outstanding classes of stock or shares, except as otherwise
2 required by law;

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

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

23 (9) any commercial paper which arises out of a current
24 transaction or the proceeds of which have been or are to be
25 used for current transaction and which evidences an

1 obligation to pay cash within 9 months of the date of
2 issuance, exclusive of days of grace, or any renewal of such
3 paper which is likewise limited or any guarantee of such
4 paper or of any such renewal, when such commercial paper is
5 sold to the banks or insurance companies;

6 (10) any investment contract issued in connection with
7 an employee's stock purchase, savings, pension,
8 profit-sharing, or similar benefit plan;

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

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

24 (13) any national market system security listed or
25 approved for listing upon notice of issuance on the national

1 association of securities dealers automated quotation system
2 or any other national quotation system approved by the
3 commissioner; any other security of the same issuer that is
4 of senior or substantially equal rank; any security called
5 for by subscription rights or warrants so listed or
6 approved; or any warrant or right to purchase or subscribe
7 to any of the securities listed in this subsection."

8 **Section 3.** Section 30-10-201, MCA, is amended to read:

9 "30-10-201. Registration of broker-dealers, salesmen,
10 investment advisers, and investment adviser representatives.

11 (1) It is unlawful for any a person to transact business in
12 this state as a broker-dealer or salesman, except in
13 transactions-exempt-under as provided in 30-10-105, unless
14 he is registered under parts 1 through 3 of this chapter.

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

19 (3) It is unlawful for any person to transact business
20 in this state as an investment adviser or as an investment
21 adviser representative 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;

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 or investment adviser representative may apply for

2 registration by filing an application in such form as the

3 commissioner prescribes and payment of the fee prescribed in

4 30-10-209. A salesman acting as agent for an issuer or

5 broker-dealer who is not currently in compliance with the

6 financial responsibility requirements prescribed by the

7 Securities Exchange Act of 1934 and by regulations adopted

8 under it, may, in the discretion of the commissioner, be

9 required to file with the commissioner a bond of a surety

10 company duly authorized to transact business in this state.

11 The bond shall be in an amount determined by the

12 commissioner, payable to the state of Montana and

13 conditioned upon the faithful compliance with the provisions

14 of parts 1 through 3 of this chapter, and provide that upon

15 failure to so comply, the salesman shall be liable to any

16 and all persons who may suffer loss by 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 met, the

24 commissioner shall make the registration effective. No

25 effective registration of a broker-dealer, salesman,

1 investment adviser, or investment adviser representative may
2 be withdrawn or terminated without the express written
3 consent of the commissioner.

4 (7) Registration Except as provided in subsection (6),
5 registration of a broker-dealer, salesman, investment
6 adviser, or investment adviser representative ~~shall be:~~

7 (a) is effective until December 31 following such
8 registration or such other time as the commissioner may by
9 rule adopt; and

10 (b) may be renewed.

11 (8) The registration of a salesman is not effective
12 during any period when he is not associated with an issuer
13 or a registered broker-dealer specified in his application.
14 When a salesman begins or terminates a connection with an
15 issuer or registered broker-dealer, the salesman and the
16 issuer or broker-dealer shall promptly notify the
17 commissioner.

18 (9) The registration of an investment adviser
19 representative is not effective during any period when he is
20 not associated with an investment adviser registered under
21 this act and specified in the application. When an
22 investment adviser representative begins or terminates a
23 connection with an investment adviser, the investment
24 adviser shall promptly notify the commissioner.

25 (10) Registration of a broker-dealer, salesman,

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

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

1 representatives of the commissioner, as the commissioner
2 considers necessary or appropriate in the public interest or
3 for the protection of investors.

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

11 (a) has filed an application for registration under
12 this section which, as of its effective date or as of any
13 date after filing in the case of an order denying
14 effectiveness, was incomplete in any material respect or
15 contained any statement which was, in the light of the
16 circumstances under which it was made, false or misleading
17 with respect to any material fact;

18 (b) has willfully violated or willfully failed to
19 comply with any provision of parts 1 through 3 of this
20 chapter or a predecessor law or any rule or order under
21 parts 1 through 3 of this chapter or a predecessor law;

22 (c) has been convicted of any misdemeanor involving a
23 security or any aspect of the securities business or any
24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
2 continuing any conduct or practice involving any aspect of
3 the securities business;

4 (e) is the subject of an order of the commissioner
5 denying, suspending, or revoking registration as a
6 broker-dealer, salesman, investment adviser, or investment
7 adviser representative;

8 (f) is the subject of an adjudication or
9 determination, within the past 5 years, by a securities or
10 commodities agency or administrator of another state or a
11 court of competent jurisdiction, that the person has
12 violated the Securities Act of 1933, the Securities Exchange
13 Act of 1934, the Investment Advisors Act of 1940, the
14 Investment Company Act of 1940, or the Commodity Exchange
15 Act or the securities or commodities law of any other state;

16 (g) has engaged in dishonest or unethical practices in
17 the securities business;

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

24 (i) has not complied with a condition imposed by the
25 commissioner under this section or is not qualified on the

1 basis of such factors as training, experience, or knowledge
2 of the securities business;

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

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

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

16 (14) The commissioner may by order summarily postpone
17 or suspend registration pending final determination of any
18 proceeding under this section.

19 (15) Upon the entry of the order under subsection (12)
20 of this section, the commissioner shall promptly notify the
21 applicant or registrant, as well as the employer or
22 prospective employer if the applicant or registrant is a
23 salesman or investment adviser representative, that it has
24 been entered and of the reasons therefor and that if
25 requested by the applicant or registrant within 15 days

1 after the receipt of the commissioner's notification the
2 matter will be promptly set down for hearing. If no hearing
3 is requested within 15 days and none is ordered by the
4 commissioner, the order will remain in effect until it is
5 modified or vacated by the commissioner. If a hearing is
6 requested or ordered, the commissioner, after notice of and
7 opportunity for hearing, may modify or vacate the order or
8 extend it until final determination.

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

18 (17) The commissioner may, after suspending or revoking
19 registration of any broker-dealer, salesman, investment
20 adviser, or investment adviser representative, impose a fine
21 not to exceed \$5,000 upon such broker-dealer, salesman,
22 investment adviser, or investment adviser representative.
23 The fine is in addition to all other penalties imposed by
24 the laws of this state and must be collected by the
25 commissioner in the name of the state of Montana and

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

15 **Section 4.** Section 30-10-210, MCA, is amended to read:

16 "30-10-210. Examination costs. (1) Any An issuer or,
 17 broker-dealer, or investment adviser who is examined in
 18 connection with a registration under parts 1 through 3 of
 19 this chapter shall reimburse the commissioner or any of his
 20 duly authorized agents, officers, or employees for actual
 21 travel expenses, a reasonable living expense allowance, and
 22 a per diem as compensation of examiners, as necessarily
 23 incurred on account of the examination, upon presentation of
 24 a detailed account of such charges and expenses by the
 25 commissioner or pursuant to his written authorization;

1 however, no reimbursement of expenses may be required for
 2 routine examinations performed in connection with an
 3 application for registration. No person ~~shall~~ may pay and no
 4 examiner ~~shall~~ may accept any additional emolument on
 5 account of any such an examination.

6 (2) The commissioner shall pay to the state treasurer
 7 to the credit of the general fund all moneys received
 8 hereunder. The commissioner may give written authorization
 9 for payment of the examination costs referred to in
 10 subsection (1) by the person examined directly to the
 11 examiner.

12 (3) If any an issuer or, broker-dealer, or investment
 13 adviser fails to pay the charges and expenses referred to
 14 above, the same shall be paid out of the funds of the
 15 commissioner in the same manner as other disbursements of
 16 such funds. The amount so paid ~~shall-be~~ is a first lien upon
 17 all of the assets and property in this state of such the
 18 issuer or, broker-dealer, or investment adviser and may be
 19 recovered by suit by the attorney general on behalf of the
 20 state of Montana and restored to the appropriate fund.
 21 Failure of such the issuer or, broker-dealer, or investment
 22 adviser to pay such the charges and expenses ~~shall~~ also work
 23 works a forfeiture of his or its right to do business in
 24 this state under parts 1 through 3 of this chapter."

25 **Section 5.** Section 30-10-305, MCA, is amended to read:

1 "30-10-305. Injunctions and other remedies --
 2 limitations on actions. (1) If it appears to the
 3 commissioner that any person has engaged or is about to
 4 engage in any act or practice constituting a violation of
 5 any provision of parts 1 through 3 of this chapter or any
 6 rule or order hereunder, he may in his discretion:
 7 (a) issue an order directing the person to cease and
 8 desist from continuing the act or practice after reasonable
 9 notice and opportunity for a hearing. The commissioner may
 10 issue a temporary order pending the hearing that remains in
 11 effect until 10 days after the hearing on the allegations
 12 contained in the cease and desist order is held or that
 13 becomes final if the person to whom notice is addressed does
 14 not request a hearing within 15 days after receipt of the
 15 notice; or
 16 (b) without the issuance of a cease and desist order,
 17 bring an action in any court of competent jurisdiction to
 18 enjoin any such acts or practices and to enforce compliance
 19 with parts 1 through 3 of this chapter or any rule or order
 20 hereunder. Upon a proper showing, a permanent or temporary
 21 injunction, restraining order, or writ of mandamus shall be
 22 granted and a receiver or conservator may be appointed for
 23 the defendant or the defendant's assets. The commissioner
 24 may not be required to post a bond. If the commissioner
 25 prevails, he is entitled to reasonable attorneys' fees as

1 fixed by the court.
 2 (2) A final judgment or decree, criminal or civil,
 3 determining that a person has violated parts 1 through 3 of
 4 this chapter in an action brought by the commissioner for
 5 such violation, other than a consent judgment or decree
 6 entered before trial, is prima facie evidence against that
 7 person in an action brought against him under 30-10-307.
 8 (3) The commissioner may, after giving reasonable
 9 notice and an opportunity for a hearing under this section,
 10 impose a fine not to exceed \$5,000 per violation upon a
 11 person found to have engaged in any act or practice
 12 constituting a violation of any provision of parts 1 through
 13 3 of this chapter or any rule or order issued under parts 1
 14 through 3 of this chapter. The fine is in addition to all
 15 other penalties imposed by the laws of this state and must
 16 be collected by the commissioner in the name of the state of
 17 Montana and deposited in the general fund. Imposition of any
 18 fine under this subsection is an order from which an appeal
 19 may be taken pursuant to 30-10-308. If any person fails to
 20 pay a fine referred to in this subsection, the amount of the
 21 fine is a lien upon all of the assets and property of such
 22 person in this state and may be recovered by suit by the
 23 commissioner and deposited in the general fund. Failure of
 24 the person to pay a fine also constitutes a forfeiture of
 25 his right to do business in this state under parts 1 through

1 3 of this chapter.

2 (4) (a) No An administrative or civil action may not
3 be maintained by the commissioner under this section to
4 enforce any a liability founded on a violation of
5 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) or 30-10-202
6 unless it is brought within 2 years after the violation
7 occurs.

8 (b) No An administrative or civil action may not be
9 maintained by the commissioner under this section to enforce
10 any a liability founded on a violation of parts 1 through 3
11 of this chapter or any rule or order issued thereunder,
12 except 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) and
13 30-10-202, unless it is brought within 2 years after
14 discovery by the commissioner or his staff of the facts
15 constituting the violation.

16 (c) In no event may an action be maintained under this
17 section to enforce any liability founded on a violation of
18 parts 1 through 3 of this chapter or any rule or order
19 issued thereunder unless it is brought within 5 years after
20 the transaction on which the action is based."

21 **Section 6. Extension of authority.** Any existing
22 authority to make rules on the subject of the provisions of
23 [this act] is extended to the provisions of [this act].

24 **Section 7. Effective date.** [This act] is effective on
25 passage and approval.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

1 SENATE BILL NO. 27
2 INTRODUCED BY MEYER
3 BY REQUEST OF THE STATE AUDITOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS
7 30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305,
8 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 **Section 1.** Section 30-10-103, MCA, is amended to read:
12 "30-10-103. Definitions. When used in parts 1 through
13 3 of this chapter, unless the context requires otherwise,
14 the following definitions apply:
15 (1) "Commissioner" means securities commissioner of
16 this state.
17 (2) "Salesman" means any individual other than a
18 broker-dealer who represents a broker-dealer or issuer in
19 effecting or attempting to effect sales of securities. A
20 partner, officer, or director of a broker-dealer or issuer
21 is a salesman only if he otherwise comes within this
22 definition. "Salesman" does not include an individual who
23 represents an issuer in:
24 (a) effecting a transaction in a security exempted by
25 subsections (1), (2), (3), (8), (9), (10), or (11) of

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

1 byproduct;

2 (ii) any metal or mineral, including a precious metal,
3 or any gem or gem stone, whether characterized as precious,
4 semiprecious, or otherwise;

5 (iii) any fuel, whether liquid, gaseous, or otherwise;

6 (iv) foreign currency; and

7 (v) all other goods, articles, products, or items of
8 any kind.

9 (b) Commodity does not include:

10 (i) a numismatic coin with a fair market value at
11 least 15% higher than the value of the metal it contains;

12 (ii) real property or any timber, agricultural, or
13 livestock product grown or raised on real property and
14 offered and sold by the owner or lessee of such real
15 property; or

16 (iii) any work of art offered or sold by an art dealer
17 at public auction or offered or sold through a private sale
18 by the owner.

19 (6) "Commodity Exchange Act" means the federal statute
20 of that name as amended on the effective date of this
21 subsection.

22 (7) "Commodity futures trading commission" means the
23 independent regulatory agency established by congress to
24 administer the Commodity Exchange Act.

25 (8) (a) "Commodity investment contract" means any

1 account, agreement, or contract for the purchase or sale,
2 primarily for speculation or investment purposes and not for
3 use or consumption by the offeree or purchaser, of one or
4 more commodities, whether for immediate or subsequent
5 delivery or whether delivery is intended by the parties, and
6 whether characterized as a cash contract, deferred shipment
7 or deferred delivery contract, forward contract, futures
8 contract, installment or margin contract, leverage contract,
9 or otherwise. Any commodity investment contract offered or
10 sold, in the absence of evidence to the contrary, is
11 presumed to be offered or sold for speculation or investment
12 purposes.

13 (b) A commodity investment contract does not include a
14 contract or agreement that requires, and under which the
15 purchaser receives, within 28 calendar days after the
16 payment in good funds of any portion of the purchase price,
17 physical delivery of the total amount of each commodity to
18 be purchased under the contract or agreement.

19 (9) (a) "Commodity option" means any account,
20 agreement, or contract giving a party to the account,
21 agreement, or contract the right but not the obligation to
22 purchase or sell one or more commodities or one or more
23 commodity contracts, whether characterized as an option,
24 privilege, indemnity, bid, offer, put, call, advance
25 guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

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

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

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

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

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

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

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

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

1 (iv) supervises employees who perform any of the
2 foregoing.

3 (b) Investment adviser representative does not include
4 an individual registered as a salesman pursuant to
5 30-10-201.

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

18 (14) "Nonissuer" means not directly or indirectly for
19 the benefit of the issuer.

20 (15) "Person", for the purpose of parts 1 through 3 of
21 this chapter, means an individual, a corporation, a
22 partnership, an association, a joint-stock company, a trust
23 where the interests of the beneficiaries are evidenced by a
24 security, an unincorporated organization, a government, or a
25 political subdivision of a government.

1 (16) "Precious metal" means the following, in coin,
2 bullion, or other form:

- 3 (a) silver;
4 (b) gold;
5 (c) platinum;
6 (d) palladium;
7 (e) copper; and
8 (f) such other items as the commissioner may by rule
9 or order specify.

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

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

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

1 another issuer, is considered to include an offer of the
2 other security.

3 (18) "Securities Act of 1933", "Securities Exchange Act
4 of 1934", "Public Utility Holding Company Act of 1935",
5 "Investment Advisors Act of 1940", and "Investment Company
6 Act of 1940" mean the federal statutes of those names as
7 amended before or after July 1, 1961.

8 (19) "Security" means any note; stock; treasury stock;
9 bond; commodity investment contract; commodity option;
10 debenture; evidence of indebtedness; certificate of interest
11 or participation in any profit-sharing agreement;
12 collateral-trust certificate; preorganization certificate or
13 subscription; transferable shares; investment contract;
14 voting-trust certificate; certificate of deposit for a
15 security; certificate of interest or participation in an
16 oil, gas, or mining title or lease or in payments out of
17 production under such a title or lease; or, in general, any
18 interest or instrument commonly known as a security or any
19 certificate of interest or participation in, temporary or
20 interim certificate for, receipt for, guarantee of, or
21 warrant or right to subscribe to or purchase any of the
22 foregoing. "Security" does not include any insurance or
23 endowment policy or annuity contract under which an
24 insurance company promises to pay a sum of money either in a
25 lump sum or periodically for life or some other specified

1 period.

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

5 (21) "Transact", "transact business", or "transaction"
6 includes the meanings of the terms "sale", "sell", and
7 "offer".

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

9 **"30-10-104. Exempt securities.** Sections 30-10-202
10 through 30-10-207 do not apply to any of the following
11 securities:

12 (1) any security (including a revenue obligation)
13 issued or guaranteed by the United States, any state, any
14 political subdivision of a state, or any agency or corporate
15 or other instrumentality of one or more of the foregoing;
16 provided, however, 30-10-202 through 30-10-207 apply to a
17 security issued by any of the foregoing that is payable
18 solely from payments to be received in respect of property
19 or money used under a lease, sale, or loan arrangement by or
20 for a nongovernmental industrial or commercial enterprise,
21 unless such enterprise or any security of which it is the
22 issuer is within any of the exemptions enumerated in
23 subsections (2) through (13) of this section;

24 (2) any security issued or guaranteed by Canada, any
25 Canadian province, any political subdivision of any such

1 province, or any agency or corporate or other
2 instrumentality of one or more of the foregoing or any other
3 foreign government with which the United States currently
4 maintains diplomatic relations if the security is recognized
5 as a valid obligation by the issuer or guarantor;

6 (3) any security issued by and representing an
7 interest in or a debt of or guaranteed by any bank organized
8 under the laws of the United States or any bank, savings
9 institution, or trust company organized and supervised under
10 the laws of any state;

11 (4) any security issued by and representing an
12 interest in or a debt of or guaranteed by any federal
13 savings and loan association or any building and loan or
14 similar association organized under the laws of any state
15 and authorized to do business in this state;

16 (5) any security issued or guaranteed by any federal
17 credit union or any credit union, industrial loan
18 association, or similar association organized and supervised
19 under the laws of this state;

20 (6) any security issued or guaranteed by any railroad,
21 other common carrier, public utility, or holding company
22 which is:

23 (a) subject to the jurisdiction of the interstate
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a
4 governmental authority of the United States or any state or
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee
7 of the security by a governmental authority of the United
8 States, any state, Canada, or any Canadian province; also
9 equipment trust certificates in respect to equipment
10 conditionally sold or leased to a railroad or public utility
11 if other securities issued by such railroad or public
12 utility would be exempt under this subsection;

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

15 (a) if the issuer is not organized under the laws of
16 the United States or a state, it has appointed a duly
17 authorized agent in the United States for service of process
18 and has set forth the name and address of such agent in its
19 prospectus;

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

24 (c) neither the issuer nor a significant subsidiary
25 has had a material default during the last 7 years (or the

1 issuer's existence if less than 7 years) in the payment of:

2 (i) principal, interest, dividend, or sinking fund
3 installment on preferred stock or indebtedness for borrowed
4 money; or

5 (ii) rentals under leases with terms of 3 years or
6 more;

7 (d) the issuer has had consolidated net income (before
8 extraordinary items and the cumulative effect of accounting
9 changes) of at least \$1 million in 4 of its last 5 fiscal
10 years, including its last fiscal year; and if the offering
11 is of interest-bearing securities, has had for its last
12 fiscal year such net income, but before deduction for income
13 taxes and depreciation, of at least 1 1/2 times the issuer's
14 annual interest expense, giving effect to the proposed
15 offering and the intended use of the proceeds. "Last fiscal
16 year" as used in this subsection (7)(d), means the most
17 recent year for which audited financial statements are
18 available, provided that such statements cover a fiscal
19 period ended not more than 15 months from the commencement
20 of the offering.

21 (e) if the offering is of stock or shares, other than
22 preferred stock or shares, such securities have voting
23 rights and such rights include the right to have at least as
24 many votes per share and the right to vote on at least as
25 many general corporate decisions as each of the issuer's

1 outstanding classes of stock or shares, except as otherwise
2 required by law;

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

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

23 (9) any commercial paper which arises out of a current
24 transaction or the proceeds of which have been or are to be
25 used for current transaction and which evidences an

1 obligation to pay cash within 9 months of the date of
2 issuance, exclusive of days of grace, or any renewal of such
3 paper which is likewise limited or any guarantee of such
4 paper or of any such renewal, when such commercial paper is
5 sold to the banks or insurance companies;

6 (10) any investment contract issued in connection with
7 an employee's stock purchase, savings, pension,
8 profit-sharing, or similar benefit plan;

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

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

24 (13) any national market system security listed or
25 approved for listing upon notice of issuance on the national

1 association of securities dealers automated quotation system
2 or any other national quotation system approved by the
3 commissioner; any other security of the same issuer that is
4 of senior or substantially equal rank; any security called
5 for by subscription rights or warrants so listed or
6 approved; or any warrant or right to purchase or subscribe
7 to any of the securities listed in this subsection."

8 **Section 3.** Section 30-10-201, MCA, is amended to read:

9 **"30-10-201. Registration of broker-dealers, salesmen,**
10 **investment advisers, and investment adviser representatives.**

11 (1) It is unlawful for any a person to transact business in
12 this state as a broker-dealer or salesman, except in
13 transactions-exempt-under as provided in 30-10-105, unless
14 he is registered under parts 1 through 3 of this chapter.

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

19 (3) It is unlawful for any person to transact business
20 in this state as an investment adviser or as an investment
21 adviser representative 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;

(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; 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 (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(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 or investment adviser representative 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. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

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

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman,

1 investment adviser, or investment adviser representative may
2 be withdrawn or terminated without the express written
3 consent of the commissioner.

4 (7) Registration Except as provided in subsection (6),
5 registration of a broker-dealer, salesman, investment
6 adviser, or investment adviser representative ~~shall be:~~

7 (a) is effective until December 31 following such
8 registration or such other time as the commissioner may by
9 rule adopt; and

10 (b) may be renewed.

11 (8) The registration of a salesman is not effective
12 during any period when he is not associated with an issuer
13 or a registered broker-dealer specified in his application.
14 When a salesman begins or terminates a connection with an
15 issuer or registered broker-dealer, the salesman and the
16 issuer or broker-dealer shall promptly notify the
17 commissioner.

18 (9) The registration of an investment adviser
19 representative is not effective during any period when he is
20 not associated with an investment adviser registered under
21 this act and specified in the application. When an
22 investment adviser representative begins or terminates a
23 connection with an investment adviser, the investment
24 adviser shall promptly notify the commissioner.

25 (10) Registration of a broker-dealer, salesman,

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

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

1 representatives of the commissioner, as the commissioner
2 considers necessary or appropriate in the public interest or
3 for the protection of investors.

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

11 (a) has filed an application for registration under
12 this section which, as of its effective date or as of any
13 date after filing in the case of an order denying
14 effectiveness, was incomplete in any material respect or
15 contained any statement which was, in the light of the
16 circumstances under which it was made, false or misleading
17 with respect to any material fact;

18 (b) has willfully violated or willfully failed to
19 comply with any provision of parts 1 through 3 of this
20 chapter or a predecessor law or any rule or order under
21 parts 1 through 3 of this chapter or a predecessor law;

22 (c) has been convicted of any misdemeanor involving a
23 security or any aspect of the securities business or any
24 felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or
2 continuing any conduct or practice involving any aspect of
3 the securities business;

4 (e) is the subject of an order of the commissioner
5 denying, suspending, or revoking registration as a
6 broker-dealer, salesman, investment adviser, or investment
7 adviser representative;

8 (f) is the subject of an adjudication or
9 determination, within the past 5 years, by a securities or
10 commodities agency or administrator of another state or a
11 court of competent jurisdiction, that the person has
12 violated the Securities Act of 1933, the Securities Exchange
13 Act of 1934, the Investment Advisors Act of 1940, the
14 Investment Company Act of 1940, or the Commodity Exchange
15 Act or the securities or commodities law of any other state;

16 (g) has engaged in dishonest or unethical practices in
17 the securities business;

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

24 (i) has not complied with a condition imposed by the
25 commissioner under this section or is not qualified on the

1 basis of such factors as training, experience, or knowledge
2 of the securities business;

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

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

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

16 (14) The commissioner may by order summarily postpone
17 or suspend registration pending final determination of any
18 proceeding under this section.

19 (15) Upon the entry of the order under subsection (12)
20 of this section, the commissioner shall promptly notify the
21 applicant or registrant, as well as the employer or
22 prospective employer if the applicant or registrant is a
23 salesman or investment adviser representative, that it has
24 been entered and of the reasons therefor and that if
25 requested by the applicant or registrant within 15 days

1 after the receipt of the commissioner's notification the
2 matter will be promptly set down for hearing. If no hearing
3 is requested within 15 days and none is ordered by the
4 commissioner, the order will remain in effect until it is
5 modified or vacated by the commissioner. If a hearing is
6 requested or ordered, the commissioner, after notice of and
7 opportunity for hearing, may modify or vacate the order or
8 extend it until final determination.

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

18 (17) The commissioner may, after suspending or revoking
19 registration of any broker-dealer, salesman, investment
20 adviser, or investment adviser representative, impose a fine
21 not to exceed \$5,000 upon such broker-dealer, salesman,
22 investment adviser, or investment adviser representative.
23 The fine is in addition to all other penalties imposed by
24 the laws of this state and must be collected by the
25 commissioner in the name of the state of Montana and

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

15 **Section 4.** Section 30-10-210, MCA, is amended to read:

16 "30-10-210. Examination costs. (1) Any An issuer or,
 17 broker-dealer, or investment adviser who is examined in
 18 connection with a registration under parts 1 through 3 of
 19 this chapter shall reimburse the commissioner or any of his
 20 duly authorized agents, officers, or employees for actual
 21 travel expenses, a reasonable living expense allowance, and
 22 a per diem as compensation of examiners, as necessarily
 23 incurred on account of the examination, upon presentation of
 24 a detailed account of such charges and expenses by the
 25 commissioner or pursuant to his written authorization;

1 however, no reimbursement of expenses may be required for
 2 routine examinations performed in connection with an
 3 application for registration. No person ~~shall~~ may pay and no
 4 examiner ~~shall~~ may accept any additional emolument on
 5 account of any such an examination.

6 (2) The commissioner shall pay to the state treasurer
 7 to the credit of the general fund all moneys received
 8 hereunder. The commissioner may give written authorization
 9 for payment of the examination costs referred to in
 10 subsection (1) by the person examined directly to the
 11 examiner.

12 (3) If any an issuer or, broker-dealer, or investment
 13 adviser fails to pay the charges and expenses referred to
 14 above, the same shall be paid out of the funds of the
 15 commissioner in the same manner as other disbursements of
 16 such funds. The amount so paid ~~shall-be~~ is a first lien upon
 17 all of the assets and property in this state of such the
 18 issuer or, broker-dealer, or investment adviser and may be
 19 recovered by suit by the attorney general on behalf of the
 20 state of Montana and restored to the appropriate fund.
 21 Failure of such the issuer or, broker-dealer, or investment
 22 adviser to pay such the charges and expenses ~~shall~~ also work
 23 works a forfeiture of his or its right to do business in
 24 this state under parts 1 through 3 of this chapter."

25 **Section 5.** Section 30-10-305, MCA, is amended to read:

1 "30-10-305. Injunctions and other remedies --
2 limitations on actions. (1) If it appears to the
3 commissioner that any person has engaged or is about to
4 engage in any act or practice constituting a violation of
5 any provision of parts 1 through 3 of this chapter or any
6 rule or order hereunder, he may in his discretion:

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

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

1 fixed by the court.

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

8 (3) The commissioner may, after giving reasonable
9 notice and an opportunity for a hearing under this section,
10 impose a fine not to exceed \$5,000 per violation upon a
11 person found to have engaged in any act or practice
12 constituting a violation of any provision of parts 1 through
13 3 of this chapter or any rule or order issued under parts 1
14 through 3 of this chapter. The fine is in addition to all
15 other penalties imposed by the laws of this state and must
16 be collected by the commissioner in the name of the state of
17 Montana and deposited in the general fund. Imposition of any
18 fine under this subsection is an order from which an appeal
19 may be taken pursuant to 30-10-308. If any person fails to
20 pay a fine referred to in this subsection, the amount of the
21 fine is a lien upon all of the assets and property of such
22 person in this state and may be recovered by suit by the
23 commissioner and deposited in the general fund. Failure of
24 the person to pay a fine also constitutes a forfeiture of
25 his right to do business in this state under parts 1 through

1 3 of this chapter.

2 (4) (a) No An administrative or civil action may not
 3 be maintained by the commissioner under this section to
 4 enforce any a liability founded on a violation of
 5 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) or 30-10-202
 6 unless it is brought within 2 years after the violation
 7 occurs.

8 (b) No An administrative or civil action may not be
 9 maintained by the commissioner under this section to enforce
 10 any a liability founded on a violation of parts 1 through 3
 11 of this chapter or any rule or order issued thereunder,
 12 except 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) and
 13 30-10-202, unless it is brought within 2 years after
 14 discovery by the commissioner or his staff of the facts
 15 constituting the violation.

16 (c) In no event may an action be maintained under this
 17 section to enforce any liability founded on a violation of
 18 parts 1 through 3 of this chapter or any rule or order
 19 issued thereunder unless it is brought within 5 years after
 20 the transaction on which the action is based."

21 **Section 6. Extension of authority.** Any existing
 22 authority to make rules on the subject of the provisions of
 23 [this act] is extended to the provisions of [this act].

24 **Section 7. Effective date.** [This act] is effective on
 25 passage and approval.

-End-

1 SENATE BILL NO. 27
2 INTRODUCED BY MEYER
3 BY REQUEST OF THE STATE AUDITOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS
7 30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305,
8 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 **Section 1.** Section 30-10-103, MCA, is amended to read:
12 "30-10-103. Definitions. When used in parts 1 through
13 3 of this chapter, unless the context requires otherwise,
14 the following definitions apply:
15 (1) "Commissioner" means securities commissioner of
16 this state.
17 (2) "Salesman" means any individual other than a
18 broker-dealer who represents a broker-dealer or issuer in
19 effecting or attempting to effect sales of securities. A
20 partner, officer, or director of a broker-dealer or issuer
21 is a salesman only if he otherwise comes within this
22 definition. "Salesman" does not include an individual who
23 represents an issuer in:
24 (a) effecting a transaction in a security exempted by
25 subsections (1), (2), (3), (8), (9), (10), or (11) of

There are no changes on SB 27 and
due to length will not be reprinted.
Please refer to introduced or second
reading bill for complete text.

STANDING COMMITTEE REPORT

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 27 (first reading reference copy -- blue) be concurred in as amended.

Signed: 
Robert Pavlovich, Chairman

[REP.THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 21, line 10.

Strike: "or"

Following: "director"

Insert: ", person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser"

HOUSE

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SENATE BILL NO. 27

INTRODUCED BY MEYER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11) of

30-10-104;

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

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

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

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

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

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

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or

1 byproduct;

2 (ii) any metal or mineral, including a precious metal,
3 or any gem or gem stone, whether characterized as precious,
4 semiprecious, or otherwise;

5 (iii) any fuel, whether liquid, gaseous, or otherwise;

6 (iv) foreign currency; and

7 (v) all other goods, articles, products, or items of
8 any kind.

9 (b) Commodity does not include:

10 (i) a numismatic coin with a fair market value at
11 least 15% higher than the value of the metal it contains;

12 (ii) real property or any timber, agricultural, or
13 livestock product grown or raised on real property and
14 offered and sold by the owner or lessee of such real
15 property; or

16 (iii) any work of art offered or sold by an art dealer
17 at public auction or offered or sold through a private sale
18 by the owner.

19 (6) "Commodity Exchange Act" means the federal statute
20 of that name as amended on the effective date of this
21 subsection.

22 (7) "Commodity futures trading commission" means the
23 independent regulatory agency established by congress to
24 administer the Commodity Exchange Act.

25 (8) (a) "Commodity investment contract" means any

1 account, agreement, or contract for the purchase or sale,
2 primarily for speculation or investment purposes and not for
3 use or consumption by the offeree or purchaser, of one or
4 more commodities, whether for immediate or subsequent
5 delivery or whether delivery is intended by the parties, and
6 whether characterized as a cash contract, deferred shipment
7 or deferred delivery contract, forward contract, futures
8 contract, installment or margin contract, leverage contract,
9 or otherwise. Any commodity investment contract offered or
10 sold, in the absence of evidence to the contrary, is
11 presumed to be offered or sold for speculation or investment
12 purposes.

13 (b) A commodity investment contract does not include a
14 contract or agreement that requires, and under which the
15 purchaser receives, within 28 calendar days after the
16 payment in good funds of any portion of the purchase price,
17 physical delivery of the total amount of each commodity to
18 be purchased under the contract or agreement.

19 (9) (a) "Commodity option" means any account,
20 agreement, or contract giving a party to the account,
21 agreement, or contract the right but not the obligation to
22 purchase or sell one or more commodities or one or more
23 commodity contracts, whether characterized as an option,
24 privilege, indemnity, bid, offer, put, call, advance
25 guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

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

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

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

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

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

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

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

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

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

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

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

1 (iv) supervises employees who perform any of the
2 foregoing.

3 (b) Investment adviser representative does not include
4 an individual registered as a salesman pursuant to
5 30-10-201.

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

18 (14) "Nonissuer" means not directly or indirectly for
19 the benefit of the issuer.

20 (15) "Person", for the purpose of parts 1 through 3 of
21 this chapter, means an individual, a corporation, a
22 partnership, an association, a joint-stock company, a trust
23 where the interests of the beneficiaries are evidenced by a
24 security, an unincorporated organization, a government, or a
25 political subdivision of a government.

1 (16) "Precious metal" means the following, in coin,
2 bullion, or other form:

- 3 (a) silver;
- 4 (b) gold;
- 5 (c) platinum;
- 6 (d) palladium;
- 7 (e) copper; and
- 8 (f) such other items as the commissioner may by rule
9 or order specify.

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

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

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

1 another issuer, is considered to include an offer of the
2 other security.

3 (18) "Securities Act of 1933", "Securities Exchange Act
4 of 1934", "Public Utility Holding Company Act of 1935",
5 "Investment Advisors Act of 1940", and "Investment Company
6 Act of 1940" mean the federal statutes of those names as
7 amended before or after July 1, 1961.

8 (19) "Security" means any note; stock; treasury stock;
9 bond; commodity investment contract; commodity option;
10 debenture; evidence of indebtedness; certificate of interest
11 or participation in any profit-sharing agreement;
12 collateral-trust certificate; preorganization certificate or
13 subscription; transferable shares; investment contract;
14 voting-trust certificate; certificate of deposit for a
15 security; certificate of interest or participation in an
16 oil, gas, or mining title or lease or in payments out of
17 production under such a title or lease; or, in general, any
18 interest or instrument commonly known as a security or any
19 certificate of interest or participation in, temporary or
20 interim certificate for, receipt for, guarantee of, or
21 warrant or right to subscribe to or purchase any of the
22 foregoing. "Security" does not include any insurance or
23 endowment policy or annuity contract under which an
24 insurance company promises to pay a sum of money either in a
25 lump sum or periodically for life or some other specified

1 period.

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

5 (21) "Transact", "transact business", or "transaction"
6 includes the meanings of the terms "sale", "sell", and
7 "offer".

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

9 **"30-10-104. Exempt securities.** Sections 30-10-202
10 through 30-10-207 do not apply to any of the following
11 securities:

12 (1) any security (including a revenue obligation)
13 issued or guaranteed by the United States, any state, any
14 political subdivision of a state, or any agency or corporate
15 or other instrumentality of one or more of the foregoing;
16 provided, however, 30-10-202 through 30-10-207 apply to a
17 security issued by any of the foregoing that is payable
18 solely from payments to be received in respect of property
19 or money used under a lease, sale, or loan arrangement by or
20 for a nongovernmental industrial or commercial enterprise,
21 unless such enterprise or any security of which it is the
22 issuer is within any of the exemptions enumerated in
23 subsections (2) through (13) of this section;

24 (2) any security issued or guaranteed by Canada, any
25 Canadian province, any political subdivision of any such

1 province, or any agency or corporate or other
2 instrumentality of one or more of the foregoing or any other
3 foreign government with which the United States currently
4 maintains diplomatic relations if the security is recognized
5 as a valid obligation by the issuer or guarantor;

6 (3) any security issued by and representing an
7 interest in or a debt of or guaranteed by any bank organized
8 under the laws of the United States or any bank, savings
9 institution, or trust company organized and supervised under
10 the laws of any state;

11 (4) any security issued by and representing an
12 interest in or a debt of or guaranteed by any federal
13 savings and loan association or any building and loan or
14 similar association organized under the laws of any state
15 and authorized to do business in this state;

16 (5) any security issued or guaranteed by any federal
17 credit union or any credit union, industrial loan
18 association, or similar association organized and supervised
19 under the laws of this state;

20 (6) any security issued or guaranteed by any railroad,
21 other common carrier, public utility, or holding company
22 which is:

23 (a) subject to the jurisdiction of the interstate
24 commerce commission;

25 (b) a registered holding company under the Public

1 Utility Holding Company Act of 1935 or a subsidiary of such
2 a company within the meaning of that act;

3 (c) regulated in respect of its rates and charges by a
4 governmental authority of the United States or any state or
5 municipality; or

6 (d) regulated in respect to the issuance or guarantee
7 of the security by a governmental authority of the United
8 States, any state, Canada, or any Canadian province; also
9 equipment trust certificates in respect to equipment
10 conditionally sold or leased to a railroad or public utility
11 if other securities issued by such railroad or public
12 utility would be exempt under this subsection;

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

15 (a) if the issuer is not organized under the laws of
16 the United States or a state, it has appointed a duly
17 authorized agent in the United States for service of process
18 and has set forth the name and address of such agent in its
19 prospectus;

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

24 (c) neither the issuer nor a significant subsidiary
25 has had a material default during the last 7 years (or the

1 issuer's existence if less than 7 years) in the payment of:

2 (i) principal, interest, dividend, or sinking fund
3 installment on preferred stock or indebtedness for borrowed
4 money; or

5 (ii) rentals under leases with terms of 3 years or
6 more;

7 (d) the issuer has had consolidated net income (before
8 extraordinary items and the cumulative effect of accounting
9 changes) of at least \$1 million in 4 of its last 5 fiscal
10 years, including its last fiscal year; and if the offering
11 is of interest-bearing securities, has had for its last
12 fiscal year such net income, but before deduction for income
13 taxes and depreciation, of at least 1 1/2 times the issuer's
14 annual interest expense, giving effect to the proposed
15 offering and the intended use of the proceeds. "Last fiscal
16 year" as used in this subsection (7)(d), means the most
17 recent year for which audited financial statements are
18 available, provided that such statements cover a fiscal
19 period ended not more than 15 months from the commencement
20 of the offering.

21 (e) if the offering is of stock or shares, other than
22 preferred stock or shares, such securities have voting
23 rights and such rights include the right to have at least as
24 many votes per share and the right to vote on at least as
25 many general corporate decisions as each of the issuer's

1 outstanding classes of stock or shares, except as otherwise
2 required by law;

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

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

23 (9) any commercial paper which arises out of a current
24 transaction or the proceeds of which have been or are to be
25 used for current transaction and which evidences an

1 obligation to pay cash within 9 months of the date of
2 issuance, exclusive of days of grace, or any renewal of such
3 paper which is likewise limited or any guarantee of such
4 paper or of any such renewal, when such commercial paper is
5 sold to the banks or insurance companies;

6 (10) any investment contract issued in connection with
7 an employee's stock purchase, savings, pension,
8 profit-sharing, or similar benefit plan;

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

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

24 (13) any national market system security listed or
25 approved for listing upon notice of issuance on the national

1 association of securities dealers automated quotation system
2 or any other national quotation system approved by the
3 commissioner; any other security of the same issuer that is
4 of senior or substantially equal rank; any security called
5 for by subscription rights or warrants so listed or
6 approved; or any warrant or right to purchase or subscribe
7 to any of the securities listed in this subsection."

8 **Section 3.** Section 30-10-201, MCA, is amended to read:

9 "30-10-201. Registration of broker-dealers, salesmen,
10 investment advisers, and investment adviser representatives.

11 (1) It is unlawful for any a person to transact business in
12 this state as a broker-dealer or salesman, except in
13 transactions-exempt-under as provided in 30-10-105, unless
14 he is registered under parts 1 through 3 of this chapter.

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

19 (3) It is unlawful for any person to transact business
20 in this state as an investment adviser or as an investment
21 adviser representative 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;

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 or investment adviser representative may apply for

2 registration by filing an application in such form as the

3 commissioner prescribes and payment of the fee prescribed in

4 30-10-209. A salesman acting as agent for an issuer or

5 broker-dealer who is not currently in compliance with the

6 financial responsibility requirements prescribed by the

7 Securities Exchange Act of 1934 and by regulations adopted

8 under it, may, in the discretion of the commissioner, be

9 required to file with the commissioner a bond of a surety

10 company duly authorized to transact business in this state.

11 The bond shall be in an amount determined by the

12 commissioner, payable to the state of Montana and

13 conditioned upon the faithful compliance with the provisions

14 of parts 1 through 3 of this chapter, and provide that upon

15 failure to so comply, the salesman shall be liable to any

16 and all persons who may suffer loss by 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 met, the

24 commissioner shall make the registration effective. No

25 effective registration of a broker-dealer, salesman,

1 investment adviser, or investment adviser representative may
2 be withdrawn or terminated without the express written
3 consent of the commissioner.

4 (7) Registration Except as provided in subsection (6),
5 registration of a broker-dealer, salesman, investment
6 adviser, or investment adviser representative ~~shall be:~~

7 (a) is effective until December 31 following such
8 registration or such other time as the commissioner may by
9 rule adopt; and

10 (b) may be renewed.

11 (8) The registration of a salesman is not effective
12 during any period when he is not associated with an issuer
13 or a registered broker-dealer specified in his application.
14 When a salesman begins or terminates a connection with an
15 issuer or registered broker-dealer, the salesman and the
16 issuer or broker-dealer shall promptly notify the
17 commissioner.

18 (9) The registration of an investment adviser
19 representative is not effective during any period when he is
20 not associated with an investment adviser registered under
21 this act and specified in the application. When an
22 investment adviser representative begins or terminates a
23 connection with an investment adviser, the investment
24 adviser shall promptly notify the commissioner.

25 (10) Registration of a broker-dealer, salesman,

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

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

1 representatives of the commissioner, as the commissioner
2 considers necessary or appropriate in the public interest or
3 for the protection of investors.

4 (12) The commissioner may by order deny, suspend, or
5 revoke registration of any broker-dealer, salesman,
6 investment adviser, or investment adviser representative if
7 he finds that the order is in the public interest and that
8 the applicant or registrant or, in the case of a
9 broker-dealer or investment adviser, any partner, officer,
10 or director, PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING
11 SIMILAR FUNCTIONS, OR PERSON DIRECTLY OR INDIRECTLY
12 CONTROLLING THE BROKER-DEALER OR INVESTMENT ADVISER:

13 (a) has filed an application for registration under
14 this section which, as of its effective date or as of any
15 date after filing in the case of an order denying
16 effectiveness, was incomplete in any material respect or
17 contained any statement which was, in the light of the
18 circumstances under which it was made, false or misleading
19 with respect to any material fact;

20 (b) has willfully violated or willfully failed to
21 comply with any provision of parts 1 through 3 of this
22 chapter or a predecessor law or any rule or order under
23 parts 1 through 3 of this chapter or a predecessor law;

24 (c) has been convicted of any misdemeanor involving a
25 security or any aspect of the securities business or any

1 felony;

2 (d) is permanently or temporarily enjoined by any
3 court of competent jurisdiction from engaging in or
4 continuing any conduct or practice involving any aspect of
5 the securities business;

6 (e) is the subject of an order of the commissioner
7 denying, suspending, or revoking registration as a
8 broker-dealer, salesman, investment adviser, or investment
9 adviser representative;

10 (f) is the subject of an adjudication or
11 determination, within the past 5 years, by a securities or
12 commodities agency or administrator of another state or a
13 court of competent jurisdiction, that the person has
14 violated the Securities Act of 1933, the Securities Exchange
15 Act of 1934, the Investment Advisors Act of 1940, the
16 Investment Company Act of 1940, or the Commodity Exchange
17 Act or the securities or commodities law of any other state;

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

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

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

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

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

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

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

21 (15) Upon the entry of the order under subsection (12)
22 of this section, the commissioner shall promptly notify the
23 applicant or registrant, as well as the employer or
24 prospective employer if the applicant or registrant is a
25 salesman or investment adviser representative, that it has

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

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

20 (17) The commissioner may, after suspending or revoking
21 registration of any broker-dealer, salesman, investment
22 adviser, or investment adviser representative, impose a fine
23 not to exceed \$5,000 upon such broker-dealer, salesman,
24 investment adviser, or investment adviser representative.
25 The fine is in addition to all other penalties imposed by

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

Section 4. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any An issuer or, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of

a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person ~~shall~~ may pay and no examiner ~~shall~~ may accept any additional emolument on account of ~~any~~ such an examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If ~~any~~ an issuer or, broker-dealer, or investment adviser fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid ~~shall-be~~ is a first lien upon all of the assets and property in this state of ~~such the~~ the issuer or, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of ~~such the~~ the issuer or, broker-dealer, or investment adviser to pay ~~such the~~ such the charges and expenses ~~shall~~ also work works a forfeiture of his or its right to do business in

1 this state under parts 1 through 3 of this chapter."

2 **Section 5.** Section 30-10-305, MCA, is amended to read:

3 "30-10-305. Injunctions and other remedies --
4 limitations on actions. (1) If it appears to the
5 commissioner that any person has engaged or is about to
6 engage in any act or practice constituting a violation of
7 any provision of parts 1 through 3 of this chapter or any
8 rule or order hereunder, he may in his discretion:

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

18 (b) without the issuance of a cease and desist order,
19 bring an action in any court of competent jurisdiction to
20 enjoin any such acts or practices and to enforce compliance
21 with parts 1 through 3 of this chapter or any rule or order
22 hereunder. Upon a proper showing, a permanent or temporary
23 injunction, restraining order, or writ of mandamus shall be
24 granted and a receiver or conservator may be appointed for
25 the defendant or the defendant's assets. The commissioner

1 may not be required to post a bond. If the commissioner
2 prevails, he is entitled to reasonable attorneys' fees as
3 fixed by the court.

4 (2) A final judgment or decree, criminal or civil,
5 determining that a person has violated parts 1 through 3 of
6 this chapter in an action brought by the commissioner for
7 such violation, other than a consent judgment or decree
8 entered before trial, is prima facie evidence against that
9 person in an action brought against him under 30-10-307.

10 (3) The commissioner may, after giving reasonable
11 notice and an opportunity for a hearing under this section,
12 impose a fine not to exceed \$5,000 per violation upon a
13 person found to have engaged in any act or practice
14 constituting a violation of any provision of parts 1 through
15 3 of this chapter or any rule or order issued under parts 1
16 through 3 of this chapter. The fine is in addition to all
17 other penalties imposed by the laws of this state and must
18 be collected by the commissioner in the name of the state of
19 Montana and deposited in the general fund. Imposition of any
20 fine under this subsection is an order from which an appeal
21 may be taken pursuant to 30-10-308. If any person fails to
22 pay a fine referred to in this subsection, the amount of the
23 fine is a lien upon all of the assets and property of such
24 person in this state and may be recovered by suit by the
25 commissioner and deposited in the general fund. Failure of

1 the person to pay a fine also constitutes a forfeiture of
2 his right to do business in this state under parts 1 through
3 3 of this chapter.

4 (4) (a) No An administrative or civil action may not
5 be maintained by the commissioner under this section to
6 enforce any a liability founded on a violation of
7 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) or 30-10-202
8 unless it is brought within 2 years after the violation
9 occurs.

10 (b) No An administrative or civil action may not be
11 maintained by the commissioner under this section to enforce
12 any a liability founded on a violation of parts 1 through 3
13 of this chapter or any rule or order issued thereunder,
14 except 30-10-201(1) through ~~30-10-205~~ 30-10-201(3) and
15 30-10-202, unless it is brought within 2 years after
16 discovery by the commissioner or his staff of the facts
17 constituting the violation.

18 (c) In no event may an action be maintained under this
19 section to enforce any liability founded on a violation of
20 parts 1 through 3 of this chapter or any rule or order
21 issued thereunder unless it is brought within 5 years after
22 the transaction on which the action is based."

23 NEW SECTION. Section 6. Extension of authority. Any
24 existing authority to make rules on the subject of the
25 provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. Section 7. Effective date. [This act] is
3 effective on passage and approval.

-End-