

SENATE BILL NO. 215

INTRODUCED BY HALLIGAN, HARPER, PIPINICH,
BRADLEY, WILLIAMS, RAPP-SVRCEK

BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE SENATE

JANUARY 23, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 8, 1989	PRINTING REPORT.
FEBRUARY 9, 1989	SECOND READING, DO PASS.
FEBRUARY 10, 1989	ENGROSSING REPORT.
FEBRUARY 11, 1989	THIRD READING, PASSED. AYES, 46; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 7, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 7, 1989

REPORTED CORRECTLY ENROLLED.

APRIL 8, 1989

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 8, 1989

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 10, 1989

DELIVERED TO GOVERNOR.

APRIL 17, 1989

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 18, 1989

SECOND READING, GOVERNOR'S AMEND-
MENTS CONCURRED IN.

APRIL 19, 1989

THIRD READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

IN THE HOUSE

APRIL 21, 1989

SECOND READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

THIRD READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

IN THE SENATE

APRIL 24, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Ann* BILL NO. *215*
2 INTRODUCED BY *William* *Steph* *Bradley*
3 *William* BY REQUEST OF THE DEPARTMENT OF COMMERCE *Roy Smith*
4
5 A BILL FOR AN ACT ENTITLED: "THE "EMPLOYEE OWNERSHIP
6 OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO
7 EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF
8 EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION;
9 AMENDING SECTION 30-10-104, MCA; AND PROVIDING AN EFFECTIVE
10 DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 NEW SECTION. Section 1. Short title. [Sections 1
14 through 6] may be cited as the "Employee Ownership
15 Opportunity Act".
16 NEW SECTION. Section 2. Employee ownership
17 development policy. It is the policy of this state to
18 encourage the formation of employee-owned enterprises in
19 order to stabilize local economies, to anchor business
20 activity by increasing and broadening community investments,
21 to increase productivity, and to encourage new capital
22 formation through employee ownership.
23 NEW SECTION. Section 3. Definitions. As used in
24 [sections 2 through 6], the following definitions apply:
25 (1) "Employee-owned enterprise" means a business

1 enterprise that:
2 (a) is organized as a cooperative corporation formed
3 pursuant to the provisions of [__ Bill No. __ (LC 1149) or]
4 an employee stock ownership plan formed pursuant to section
5 4975(e)(7) of the Internal Revenue Code of 1986, as amended;
6 (b) requires that at least a majority of its
7 employees:
8 (i) are vested with stock in the enterprise and all of
9 whose vested employees are entitled to vote; and
10 (ii) own a majority of the shares which must be voted
11 so that the vote of a majority of the employees control the
12 vote of a majority of shares;
13 (c) requires that voting rights on corporate matters
14 for shares held in trust for the employees pass through to
15 those employees at least to the extent required by the
16 voting requirements of section 409(e) of the Internal
17 Revenue Code of 1986, as amended;
18 (d) provides vested employees the right to vote on
19 corporate matters, including merger, consolidation,
20 recapitalization, reclassification, liquidation,
21 dissolution, or sale; and
22 (e) requires that at least a majority of the members
23 of the board of directors is elected by the employees of the
24 enterprise.
25 (2) "Employee ownership group" means a group that may

1 include a corporation, labor organization, or other groups
2 of persons voluntarily affiliated for the purpose of
3 actively engaging in an effort to establish an
4 employee-owned enterprise.

5 NEW SECTION. **Section 4.** Extension of business
6 assistance services to employee-owned enterprises. A
7 business assistance program operated by the state must
8 include employee-owned enterprises within the scope of its
9 business assistance activities. An employee-owned enterprise
10 is eligible for assistance, service, or financing available
11 through any business assistance program receiving state
12 money.

13 NEW SECTION. **Section 5.** Department to offer employee
14 ownership development services. The department of commerce
15 shall:

16 (1) compile, organize, and make available to the
17 public a library of resources on the subject of employee
18 ownership and participatory management;

19 (2) research the role of employee ownership in
20 successful state and local economic development programs of
21 other states;

22 (3) provide public education on the beneficial aspects
23 of employee-owned enterprises;

24 (4) conduct seminars, workshops, and conferences to
25 increase awareness of the benefits found to be common to

1 employee-owned enterprises. At least one seminar must be
2 held annually for public officials dealing with economic
3 development, business assistance, and business financing
4 programs.

5 (5) provide technical assistance and counseling on the
6 establishment and management of employee-owned enterprises.

7 NEW SECTION. **Section 6.** Report to the legislature.
8 The department of commerce shall report to each regular
9 session of the legislature on:

10 (1) steps that the department, through its business
11 assistance and business financing programs, has taken to
12 encourage the formation and development of employee-owned
13 enterprises and participatory management practices; and

14 (2) recommendations for future legislative or
15 executive action to more effectively utilize employee-owned
16 enterprises to stabilize local economies.

17 **Section 7.** Section 30-10-104, MCA, is amended to read:

18 **"30-10-104. Exempt securities.** Sections 30-10-202
19 through 30-10-207 do not apply to any of the following
20 securities:

21 (1) any security (including a revenue obligation)
22 issued or guaranteed by the United States, any state, any
23 political subdivision of a state, or any agency or corporate
24 or other instrumentality of one or more of the foregoing;
25 provided, however, 30-10-202 through 30-10-207 apply to a

1 security issued by any of the foregoing that is payable
2 solely from payments to be received in respect of property
3 or money used under a lease, sale, or loan arrangement by or
4 for a nongovernmental industrial or commercial enterprise,
5 unless such enterprise or any security of which it is the
6 issuer is within any of the exemptions enumerated in
7 subsections (2) through ~~(13)~~ (15) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 [(14) any membership shares issued by an employee
18 cooperative corporation organized under the provisions of
19 [Bill No. (LC 1149)];]

20 (15) any securities issued by an employee stock
21 ownership plan that meets the requirements for qualification
22 under section 401 of the Internal Revenue Code of 1986."

23 **NEW SECTION. Section 8. Coordination.** If [__ Bill No.
24 __ (LC 1149)] is not passed and approved, the references to
25 [__ Bill No. __ (LC 1149)] in [sections 1 through 7] are

LC 0932/Q1

- 1 void and must be deleted by the code commissioner.
- 2 NEW SECTION. **Section 9.** Effective date. [This act] is
- 3 effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB215, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB215, entitled "The Employee Ownership Opportunity Act", would extend business assistance programs to employee-owned enterprises and exempt securities of employee-owned enterprises from securities registration.

ASSUMPTIONS:

1. The Business Assistance Division of the Department of Commerce will absorb all costs within its budget as recommended by the executive except for \$3,750 each fiscal year for direct cash outlays for the five seminars and the fees paid for the seminars.
2. A library of five copies of each of six texts will be assembled during FY90.
3. Research on employee ownership programs will be conducted by the staff.
4. Four public educational seminars and one seminar for economic development officials will be conducted annually by staff.
5. Technical assistance and counseling will be provided by staff.
6. Staff will compile a report to the next legislature which will be published in FY91.

FISCAL IMPACT:

Dept. of Commerce

Business Assistance Division

Expenditures:

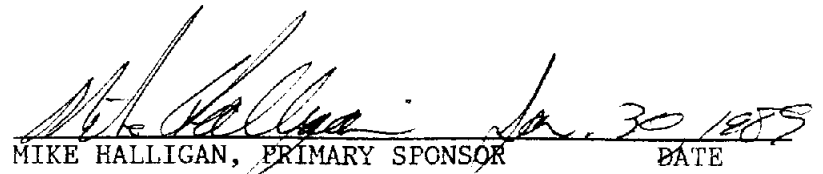
	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Operating Expenses	-0-	\$3,750	\$3,750	-0-	\$3,750	\$3,750
<u>Funding:</u>						
Private Sources	-0-	\$3,750	\$3,750	-0-	\$3,750	\$3,750



RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/30/89

DATE



MIKE HALLIGAN, PRIMARY SPONSOR

DATE

Fiscal Note for SB215, as introduced

SB 215

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 215

INTRODUCED BY HALLIGAN, HARPER, PIPINICH,

BRADLEY, WILLIAMS, RAPP-SVRCEK

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "THE "EMPLOYEE OWNERSHIP
OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO
EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF
EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION; AND
AMENDING SECTION ~~30-10-104~~ 30-10-105, MCA, ~~AND PROVIDING AN~~
~~APPROPRIATE DATE.~~"

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

NEW SECTION. **Section 1.** Short title. [Sections 1
through 6] may be cited as the "Employee Ownership
Opportunity Act".

NEW SECTION. **Section 2.** Employee ownership
development policy. It is the policy of this state to
encourage the formation of employee-owned enterprises in
order to stabilize local economies, to anchor business
activity by increasing and broadening community investments,
to increase productivity, and to encourage new capital
formation through employee ownership.

NEW SECTION. **Section 3.** Definitions. As used in
[sections 2 through 6], the following definitions apply:

(1) "Employee-owned enterprise" means a business
enterprise that:

(a) is organized as [a cooperative corporation formed
pursuant to the provisions of SENATE Bill No. 246 (LC
1149) or] an employee stock ownership plan formed pursuant
to section 4975(e)(7) of the Internal Revenue Code of 1986,
as amended;

(b) requires that at least a majority of its
employees:

(i) are vested with stock in the enterprise and all of
whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted
so that the vote of a majority of the employees control the
vote of a majority of shares;

(c) requires that voting rights on corporate matters
for shares held in trust for the employees pass through to
those employees at least to the extent required by the
voting requirements of section 409(e) of the Internal
Revenue Code of 1986, as amended;

(d) provides vested employees the right to vote on
corporate matters, including merger, consolidation,
recapitalization, reclassification, liquidation,
dissolution, or sale; and

(e) requires that at least a majority of the members
of the board of directors is elected by the employees of the

1 enterprise.

2 (2) "Employee ownership group" means a group that may
3 include a corporation, labor organization, or other groups
4 of persons voluntarily affiliated for the purpose of
5 actively engaging in an effort to establish an
6 employee-owned enterprise.

7 NEW SECTION. Section 4. Extension of business
8 assistance services to employee-owned enterprises. A
9 business assistance program operated by the state must
10 include employee-owned enterprises within the scope of its
11 business assistance activities. An employee-owned enterprise
12 is eligible for assistance, service, or financing available
13 through any business assistance program receiving state
14 money.

15 NEW SECTION. Section 5. Department to offer employee
16 ownership development services. The department of commerce
17 shall:

18 (1) compile, organize, and make available to the
19 public a library of resources on the subject of employee
20 ownership and participatory management;

21 (2) research the role of employee ownership in
22 successful state and local economic development programs of
23 other states;

24 (3) provide public education on the beneficial aspects
25 of employee-owned enterprises;

1 (*) conduct seminars, workshops, and conferences to
2 increase awareness of the benefits found to be common to
3 employee-owned enterprises. At least one seminar must be
4 held annually for public officials dealing with economic
5 development, business assistance, and business financing
6 programs.

7 (5) provide technical assistance and counseling on the
8 establishment and management of employee-owned enterprises.

9 NEW SECTION. Section 6. Report to the legislature.
10 The department of commerce shall report to each regular
11 session of the legislature on:

12 (1) steps that the department, through its business
13 assistance and business financing programs, has taken to
14 encourage the formation and development of employee-owned
15 enterprises and participatory management practices; and

16 (2) recommendations for future legislative or
17 executive action to more effectively utilize employee-owned
18 enterprises to stabilize local economies.

19 ~~Section 7. Section 30-10-104, MCA, is amended to read:~~

20 ~~"30-10-104.---Exempt---securities.---Sections---30-10-202~~
21 ~~through-30-10-207-do-not-apply-to-any-of-the-following~~
22 ~~securities:~~

23 ~~{1}---any--security--{including--a--revenue--obligation}~~
24 ~~issued-or-guaranteed-by-the-United-States,--any--state,--any~~
25 ~~political-subdivision-of-a-state,--or-any-agency-or-corporate~~

1 or--other--instrumentality--of--one--or--more--of--the--foregoing;
 2 provided,--however,--30-10-202-through-30-10-207--apply--to--a
 3 security--issued--by--any--of--the--foregoing--that--is--payable
 4 solely--from--payments--to--be--received--in--respect--of--property
 5 or--money--used--under--a--lease,--sale,--or--loan--arrangement--by--or
 6 for--a--nongovernmental--industrial--or--commercial--enterprise,
 7 unless--such--enterprise--or--any--security--of--which--it--is--the
 8 issuer--is--within--any--of--the--exemptions--enumerated--in
 9 subsections--(2)--through--(13) (15) of--this--section;
 10 (2)--any--security--issued--or--guaranteed--by--Canada,--any
 11 Canadian--province,--any--political--subdivision--of--any--such
 12 province,--or--any--agency--or--corporate--or--other
 13 instrumentality--of--one--or--more--of--the--foregoing--or--any--other
 14 foreign--government--with--which--the--United--States--currently
 15 maintains--diplomatic--relations--if--the--security--is--recognized
 16 as--a--valid--obligation--by--the--issuer--or--guarantor;
 17 (3)--any--security--issued--by--and--representing--an
 18 interest--in--or--a--debt--of--or--guaranteed--by--any--bank--organized
 19 under--the--laws--of--the--United--States--or--any--bank,--savings
 20 institution,--or--trust--company--organized--and--supervised--under
 21 the--laws--of--any--state;
 22 (4)--any--security--issued--by--and--representing--an
 23 interest--in--or--a--debt--of--or--guaranteed--by--any--federal
 24 savings--and--loan--association--or--any--building--and--loan--or
 25 similar--association--organized--under--the--laws--of--any--state

1 and--authorized--to--do--business--in--this--state;
 2 (5)--any--security--issued--or--guaranteed--by--any--federal
 3 credit--union--or--any--credit--union,--industrial--loan
 4 association,--or--similar--association--organized--and--supervised
 5 under--the--laws--of--this--state;
 6 (6)--any--security--issued--or--guaranteed--by--any--railroad,
 7 other--common--carrier,--public--utility,--or--holding--company
 8 which--is:
 9 (a)--subject--to--the--jurisdiction--of--the--interstate
 10 commerce--commission;
 11 (b)--a--registered--holding--company--under--the--Public
 12 Utility--Holding--Company--Act--of--1935--or--a--subsidiary--of--such
 13 a--company--within--the--meaning--of--that--act;
 14 (c)--regulated--in--respect--of--its--rates--and--charges--by--a
 15 governmental--authority--of--the--United--States--or--any--state--or
 16 municipality;--or
 17 (d)--regulated--in--respect--to--the--issuance--or--guarantee
 18 of--the--security--by--a--governmental--authority--of--the--United
 19 States,--any--state,--Canada,--or--any--Canadian--province,--also
 20 equipment--trust--certificates--in--respect--to--equipment
 21 conditionally--sold--or--leased--to--a--railroad--or--public--utility
 22 if--other--securities--issued--by--such--railroad--or--public
 23 utility--would--be--exempt--under--this--subsection;
 24 (7)--any--security--that--meets--all--of--the--following
 25 conditions:

1 (a)--if--the--issuer--is--not--organized--under--the--laws--of
2 the--United--States--or--a--state,--it--has--appointed--a--duly
3 authorized--agent--in--the--United--States--for--service--of--process
4 and--has--set--forth--the--name--and--address--of--such--agent--in--its
5 prospectus;

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

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

13 (i)--principal,--interest,--dividend,--or--sinking--fund
14 installment--on--preferred--stock--or--indebtedness--for--borrowed
15 money,--or

16 (ii)--rentals--under--leases--with--terms--of--3--years--or
17 more;

18 (d)--the--issuer--has--had--consolidated--net--income--(before
19 extraordinary--items--and--the--cumulative--effect--of--accounting
20 changes)--of--at--least--\$1--million--in--4--of--its--last--5--fiscal
21 years,--including--its--last--fiscal--year,--and--if--the--offering
22 is--of--interest--bearing--securities,--has--had--for--its--last
23 fiscal--year--such--net--income,--but--before--deduction--for--income
24 taxes--and--depreciation,--of--at--least--1-1/2--times--the--issuer's
25 annual--interest--expense,--giving--effect--to--the--proposed

1 offering--and--the--intended--use--of--the--proceeds,--"last--fiscal
2 year"--as--used--in--this--subsection--(7)(d)--means--the--most
3 recent--year--for--which--audited--financial--statements--are
4 available,--provided--that--such--statements--cover--a--fiscal
5 period--ended--not--more--than--15--months--from--the--commencement
6 of--the--offering;

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

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

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

{9}--any--commercial--paper--which--arises--out--of--a--current
transaction--or--the--proceeds--of--which--have--been--or--are--to--be
used--for--current--transaction--and--which--evidences--an
obligation--to--pay--cash--within--9--months--of--the--date--of
issuance,--exclusive--of--days--of--grace,--or--any--renewal--of--such
paper--which--is--likewise--limited--or--any--guarantee--of--such
paper--or--of--any--such--renewal,--when--such--commercial--paper--is
sold--to--the--banks--or--insurance--companies;

{10}--any--investment--contract--issued--in--connection--with
an--employee's--stock--purchase,--savings,--pension,
profit-sharing,--or--similar--benefit--plan;

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

{12}--any--security--listed--or--approved--for--listing--upon
notice--of--issuance--on--the--New--York--stock--exchange,--the

American--stock--exchange,--the--Pacific--stock--exchange,--the
Midwest--stock--exchange,--or--any--other--stock--exchange
registered--with--the--federal--securities--and--exchange
commission--and--approved--by--the--commissioner,--any--other
security--of--the--same--issuer--that--is--of--senior--or
substantially--equal--rank,--any--security--called--for--by
subscription--rights--or--warrants--so--listed--or--approved,--or
any--warrant--or--right--to--purchase--or--subscribe--to--any--of--the
foregoing;

{13}--any--national--market--system--security--listed--or
approved--for--listing--upon--notice--of--issuance--on--the--national
association--of--securities--dealers--automated--quotation--system
or--any--other--national--quotation--system--approved--by--the
commissioner,--any--other--security--of--the--same--issuer--that--is
of--senior--or--substantially--equal--rank,--any--security--called
for--by--subscription--rights--or--warrants--so--listed--or
approved,--or--any--warrant--or--right--to--purchase--or--subscribe
to--any--of--the--securities--listed--in--this--subsection;

{14}--any--membership--shares--issued--by--an--employee
cooperative--corporation--organized--under--the--provisions--of
{--Bill--No.--{6C-1149}};

{15}--any--securities--issued--by--an--employee--stock
ownership--plan--that--meets--the--requirements--for--qualification
under--section--401--of--the--Internal--Revenue--Code--of--1986;"

SECTION 7. SECTION 30-10-105, MCA, IS AMENDED TO READ:

1 **"30-10-105. Exempt transactions.** Except as in this
2 section expressly provided, 30-10-201 through 30-10-207
3 shall not apply to any of the following transactions:

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

8 (2) (a) any nonissuer distribution of an outstanding
9 security by a broker-dealer registered pursuant to 30-10-201
10 if:

11 (i) quotations for the securities to be offered or
12 sold (or the securities issuable upon exercise of any
13 warrant or right to purchase or subscribe to such
14 securities) are reported by the automated quotations system
15 operated by the national association of securities dealers,
16 inc., (NASDAQ) or by any other quotation system approved by
17 the commissioner by rule; or

18 (ii) the security has a fixed maturity or a fixed
19 interest or dividend provision and there has been no default
20 during the current fiscal year or within the 3 preceding
21 fiscal years, or during the existence of the issuer and any
22 predecessors if less than 3 years, in the payment of
23 principal, interest, or dividends on the security.

24 (b) The commissioner may by order deny or revoke the
25 exemption specified in subsection (2)(a) with respect to a

1 specific security. Upon the entry of such an order, the
2 commissioner shall promptly notify all registered
3 broker-dealers that it has been entered and of the reasons
4 therefor and that within 15 days of the receipt of a written
5 request the matter will be set down for hearing. If no
6 hearing is requested and none is ordered by the
7 commissioner, the order will remain in effect until it is
8 modified or vacated by the commissioner. If a hearing is
9 requested or ordered, the commissioner, after notice of and
10 opportunity for hearing to all interested persons, may
11 modify or vacate the order or extend it until final
12 determination. No order under this subsection may operate
13 retroactively. No person may be considered to have violated
14 parts 1 through 3 of this chapter by reason of any offer or
15 sale effected after the entry of an order under this
16 subsection if he sustains the burden of proof that he did
17 not know and in the exercise of reasonable care could not
18 have known of the order.

19 (3) any nonissuer transaction effected by or through a
20 registered broker-dealer pursuant to an unsolicited order or
21 offer to buy, but the commissioner may require that the
22 customer acknowledge upon a specified form that the sale was
23 unsolicited and that a signed copy of each form be preserved
24 by the broker-dealer for a specified period;

25 (4) any transaction between the issuer or other person

1 on whose behalf the offering is made and an underwriter or
2 among underwriters;

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

7 (6) any transaction executed by a bona fide pledgee
8 without any purpose of evading parts 1 through 3 of this
9 chapter;

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

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

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

23 (ii) no commission or other remuneration is paid or
24 given directly or indirectly for soliciting any prospective
25 buyer; provided, however, that a commission may be paid to a

1 registered broker-dealer if the securities involved are
2 registered with the United States securities and exchange
3 commission under the federal Securities Act of 1933, as
4 amended.

5 (b) For the purpose of the exemption provided for in
6 subsection (8)(a), an offer to sell is made in this state,
7 whether or not the offeror or any of the offerees is then
8 present in this state, if the offer either originates from
9 this state or is directed by the offeror to this state and
10 received at the place to which it is directed (or at any
11 post office in this state in the case of a mailed offer).

12 (9) any offer or sale of a preorganization certificate
13 or subscription if:

14 (a) no commission or other remuneration is paid or
15 given directly or indirectly for soliciting any prospective
16 subscriber;

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

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

19 (10) any transaction pursuant to an offer to existing
20 security holders of the issuer, including persons who at the
21 time of the transaction are holders of convertible
22 securities, nontransferable warrants, or transferable
23 warrants exercisable within not more than 90 days of their
24 issuance, if:

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly
2 for soliciting any security holder in this state; or

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

6 (11) any offer (but not a sale) of a security for which
7 registration statements have been filed under both parts 1
8 through 3 of this chapter and the Securities Act of 1933 if
9 no stop, refusal, denial, suspension, or revocation order is
10 in effect and no public proceeding or examination looking
11 toward such an order is pending under either law;

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

17 (13) the issuance of any stock dividend, whether the
18 corporation distributing the dividend is the issuer of the
19 stock or not, if nothing of value is given by stockholders
20 for the distribution other than the surrender of a right to
21 a cash dividend where the stockholder can elect to take a
22 dividend in cash or stock;

23 (14) any transaction incident to a right of conversion
24 or a statutory or judicially approved reclassification,
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or
2 sale of assets;

3 (15) any transaction in compliance with such rules as
4 the commissioner in his discretion may adopt to serve the
5 purposes of 30-10-102. The commissioner may in his
6 discretion require that 30-10-201 through 30-10-207 apply to
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital
9 company as defined in 90-8-104, provided that such company
10 first files all disclosure documents, along with a consent
11 to service of process, with the commissioner. The
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded
14 on a commodities exchange recognized by the commissioner at
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of
17 the commodity futures trading commission as granted under
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious
21 metals; and

22 (b) requires, and under which the purchaser receives
23 within 7 calendar days after payment in good funds of any
24 portion of the purchase price, physical delivery of the
25 quantity of the precious metals purchased. For the purposes

of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that

previously have been disclosed to the purchaser.

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) any offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986;

[(22) any offer or sale of a membership share issued by an employee cooperative corporation organized under the provisions of Senate Bill No. 246 (LC 1149)]."

NEW SECTION. Section 8. Coordination. If [SENATE Bill No. 246 (LC 1149)] is not passed and approved, the references to [SENATE Bill No. 246 (LC 1149)] in [sections 1 through 7] are void and must be deleted by the code commissioner.

~~NEW SECTION. --Section 9. --Effective date. --[This act] is effective July 1, 1989.~~

-End-

1 SENATE BILL NO. 215

2 INTRODUCED BY HALLIGAN, HARPER, PIPINICH,

3 BRADLEY, WILLIAMS, RAPP-SVRCEK

4 BY REQUEST OF THE DEPARTMENT OF COMMERCE

5
6 A BILL FOR AN ACT ENTITLED: "THE "EMPLOYEE OWNERSHIP
7 OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO
8 EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF
9 EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION; AND
10 AMENDING SECTION ~~30-10-104~~ 30-10-105, MCA, ~~AND PROVIDING AN~~
11 ~~EFFECTIVE DATE.~~"

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

14 NEW SECTION. Section 1. Short title. {Sections 1
15 through 6} may be cited as the "Employee Ownership
16 Opportunity Act".

17 NEW SECTION. Section 2. Employee ownership
18 development policy. It is the policy of this state to
19 encourage the formation of employee-owned enterprises in
20 order to stabilize local economies, to anchor business
21 activity by increasing and broadening community investments,
22 to increase productivity, and to encourage new capital
23 formation through employee ownership.

24 NEW SECTION. Section 3. Definitions. As used in
25 {sections 2 through 6}, the following definitions apply:

There is no change on SB 215 and will
not be reprinted. Please refer to
second reading copy (yellow) for
complete text.

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 215 (third reading copy - blue) be concurred in as amended .

Signed:


Robert Pavlovich, Chairman

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

And, that such amendments read:

1. Title, line 9.

Strike: "AND"

2. Title, line 11.

Following: "~~DATE~~"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, lines 15 and 25.

Strike: "6"

Insert: "5"

4. Page 4, line 9.

Strike: section 6 in its entirety

Renumber: subsequent sections

5. Page 18, line 17.

Strike: "7"

Insert: "6"

6. Page 18.

Following: line 20

Insert: "NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval."

HOUSE

531410SC.HBV

SB 215

SENATE BILL NO. 215

INTRODUCED BY HALLIGAN, HARPER, PIPINICH,

BRADLEY, WILLIAMS, RAPP-SVRCEK

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "THE "EMPLOYEE OWNERSHIP OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION; AND AMENDING SECTION 30-10-104 30-10-105, MCA; -AND-PROVIDING-AN EFFECTIVE-DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 6 5] may be cited as the "Employee Ownership Opportunity Act".

NEW SECTION. Section 2. Employee ownership development policy. It is the policy of this state to encourage the formation of employee-owned enterprises in order to stabilize local economies, to anchor business activity by increasing and broadening community investments, to increase productivity, and to encourage new capital formation through employee ownership.

NEW SECTION. Section 3. Definitions. As used in [sections 2 through 6 5], the following definitions apply:

(1) "Employee-owned enterprise" means a business enterprise that:

(a) is organized as [a cooperative corporation formed pursuant to the provisions of { SENATE Bill No. 246 (LC 1149) or] an employee stock ownership plan formed pursuant to section 4975(e)(7) of the Internal Revenue Code of 1986, as amended;

(b) requires that at least a majority of its employees:

(i) are vested with stock in the enterprise and all of whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted so that the vote of a majority of the employees control the vote of a majority of shares;

(c) requires that voting rights on corporate matters for shares held in trust for the employees pass through to those employees at least to the extent required by the voting requirements of section 409(e) of the Internal Revenue Code of 1986, as amended;

(d) provides vested employees the right to vote on corporate matters, including merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale; and

(e) requires that at least a majority of the members of the board of directors is elected by the employees of the

1 enterprise.

2 (2) "Employee ownership group" means a group that may
3 include a corporation, labor organization, or other groups
4 of persons voluntarily affiliated for the purpose of
5 actively engaging in an effort to establish an
6 employee-owned enterprise.

7 NEW SECTION. Section 4. Extension of business
8 assistance services to employee-owned enterprises. A
9 business assistance program operated by the state must
10 include employee-owned enterprises within the scope of its
11 business assistance activities. An employee-owned enterprise
12 is eligible for assistance, service, or financing available
13 through any business assistance program receiving state
14 money.

15 NEW SECTION. Section 5. Department to offer employee
16 ownership development services. The department of commerce
17 shall:

18 (1) compile, organize, and make available to the
19 public a library of resources on the subject of employee
20 ownership and participatory management;

21 (2) research the role of employee ownership in
22 successful state and local economic development programs of
23 other states;

24 (3) provide public education on the beneficial aspects
25 of employee-owned enterprises;

1 (4) conduct seminars, workshops, and conferences to
2 increase awareness of the benefits found to be common to
3 employee-owned enterprises. At least one seminar must be
4 held annually for public officials dealing with economic
5 development, business assistance, and business financing
6 programs.

7 (5) provide technical assistance and counseling on the
8 establishment and management of employee-owned enterprises.

9 ~~NEW SECTION. Section 6. Report to the legislature.~~
10 ~~The department of commerce shall report to each regular~~
11 ~~session of the legislature on:~~

12 ~~{1} steps that the department, through its business~~
13 ~~assistance and business financing programs, has taken to~~
14 ~~encourage the formation and development of employee-owned~~
15 ~~enterprises and participatory management practices; and~~
16 ~~{2} recommendations for future legislative or~~
17 ~~executive action to more effectively utilize employee-owned~~
18 ~~enterprises to stabilize local economies;~~

19 ~~Section 7. Section 30-10-104, MCA, is amended to read:~~
20 ~~"30-10-104. Exempt securities. Sections 30-10-202~~
21 ~~through 30-10-207 do not apply to any of the following~~
22 ~~securities:~~

23 ~~{1} any security (including a revenue obligation)~~
24 ~~issued or guaranteed by the United States, a state, any~~
25 ~~political subdivision of a state, or any agency or corporate~~

1 or--other--instrumentality--of--one--or--more--of--the--foregoing;
 2 provided,--however,--38-18-282--through--38-18-287--apply--to--a
 3 security--issued--by--any--of--the--foregoing--that--is--payable
 4 solely--from--payments--to--be--received--in--respect--of--property
 5 or--money--used--under--a--lease,--sale,--or--loan--arrangement--by--or
 6 for--a--nongovernmental--industrial--or--commercial--enterprise,
 7 unless--such--enterprise--or--any--security--of--which--it--is--the
 8 issuer--is--within--any--of--the--exemptions--enumerated--in
 9 subsections--(2)--through--(13) ~~(15)~~ of--this--section;

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

17 (3)--any--security--issued--by--and--representing--an
 18 interest--in--or--a--debt--of--or--guaranteed--by--any--bank--organized
 19 under--the--laws--of--the--United--States--or--any--bank,--savings
 20 institution,--or--trust--company--organized--and--supervised--under
 21 the--laws--of--any--state;

22 (4)--any--security--issued--by--and--representing--an
 23 interest--in--or--a--debt--of--or--guaranteed--by--any--federal
 24 savings--and--loan--association--or--any--building--and--loan--or
 25 similar--association--organized--under--the--laws--of--any--state

1 and--authorized--to--do--business--in--this--state;

2 (5)--any--security--issued--or--guaranteed--by--any--federal
 3 credit--union--or--any--credit--union,--industrial--loan
 4 association,--or--similar--association--organized--and--supervised
 5 under--the--laws--of--this--state;

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

9 (a)--subject--to--the--jurisdiction--of--the--interstate
 10 commerce--commission;

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

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

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

24 (7)--any--security--that--meets--all--of--the--following
 25 conditions:

{a}--if--the--issuer-is-not-organized-under-the-laws-of the-United-States-or--a--state,--it--has--appointed--a--duly authorized-agent-in-the-United-States-for-service-of-process and--has-set-forth-the-name-and-address-of-such-agent-in-its prospectus;

{b}--a-class-of-the-issuer's-securities-is-required--to be--and--is--registered--under--section-12-of-the-Securities Exchange-Act-of-1934-and-has-been-so-registered--for--the--3 years-immediately-preceding-the-offering-date;

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

{i}--principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

{ii}--rentals under leases with terms of 3 years or more;

{d}--the-issuer-has-had-consolidated-net-income-(before extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed

offering and the intended use of the proceeds. "last fiscal year"--as--used--in--this--subsection--(7)(d), means the most recent year--for--which--audited--financial--statements--are available, provided--that--such--statements--cover-a-fiscal period-ended-not-more-than-15-months-from--the--commencement of-the-offering;

{e}--if--the-offering-is-of-stock-or-shares, other-than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

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

1 {8}--any--security--issued--by--any--person--organized--and
 2 operated--not--for--private--profit--but---exclusively---for
 3 religious,--educational,--benevolent,--charitable,--fraternal,
 4 social,--athletic,--or--reformatory--purposes--if--the--issuer--pays
 5 a--fee--of--\$50--and--files--with--the--commissioner--20--days--prior
 6 to--the--offering--a--written--notice--specifying--the--terms--of--the
 7 offer--and--the--commissioner--does--not--disallow--the--exemption
 8 in--writing--within--such--20--day--period;

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

17 {10}--any--investment--contract--issued--in--connection--with
 18 an---employee's---stock----purchase,---savings,---pension,
 19 profit-sharing,--or--similar--benefit--plan;

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

24 {12}--any--security--listed--or--approved--for--listing--upon
 25 notice--of--issuance--on--the--New--York--stock--exchange,--the

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

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

19 {14}--any--membership--shares--issued--by--an--employee
 20 cooperative corporation organized under the provisions of
 21 {---Bill No.---(56-1149)};}

22 {15}--any--securities---issued--by--an--employee--stock
 23 ownership plan that meets the requirements for qualification
 24 under section 401 of the Internal Revenue Code of 1986."

25 **SECTION 6. SECTION 30-10-105, MCA, IS AMENDED TO READ:**

1 "30-10-105. Exempt transactions. Except as in this
2 section expressly provided, 30-10-201 through 30-10-207
3 shall not apply to any of the following transactions:

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

8 (2) (a) any nonissuer distribution of an outstanding
9 security by a broker-dealer registered pursuant to 30-10-201
10 if:

11 (i) quotations for the securities to be offered or
12 sold (or the securities issuable upon exercise of any
13 warrant or right to purchase or subscribe to such
14 securities) are reported by the automated quotations system
15 operated by the national association of securities dealers,
16 inc., (NASDAQ) or by any other quotation system approved by
17 the commissioner by rule; or

18 (ii) the security has a fixed maturity or a fixed
19 interest or dividend provision and there has been no default
20 during the current fiscal year or within the 3 preceding
21 fiscal years, or during the existence of the issuer and any
22 predecessors if less than 3 years, in the payment of
23 principal, interest, or dividends on the security.

24 (b) The commissioner may by order deny or revoke the
25 exemption specified in subsection (2)(a) with respect to a

1 specific security. Upon the entry of such an order, the
2 commissioner shall promptly notify all registered
3 broker-dealers that it has been entered and of the reasons
4 therefor and that within 15 days of the receipt of a written
5 request the matter will be set down for hearing. If no
6 hearing is requested and none is ordered by the
7 commissioner, the order will remain in effect until it is
8 modified or vacated by the commissioner. If a hearing is
9 requested or ordered, the commissioner, after notice of and
10 opportunity for hearing to all interested persons, may
11 modify or vacate the order or extend it until final
12 determination. No order under this subsection may operate
13 retroactively. No person may be considered to have violated
14 parts 1 through 3 of this chapter by reason of any offer or
15 sale effected after the entry of an order under this
16 subsection if he sustains the burden of proof that he did
17 not know and in the exercise of reasonable care could not
18 have known of the order.

19 (3) any nonissuer transaction effected by or through a
20 registered broker-dealer pursuant to an unsolicited order or
21 offer to buy, but the commissioner may require that the
22 customer acknowledge upon a specified form that the sale was
23 unsolicited and that a signed copy of each form be preserved
24 by the broker-dealer for a specified period;

25 (4) any transaction between the issuer or other person

1 on whose behalf the offering is made and an underwriter or
2 among underwriters;

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

7 (6) any transaction executed by a bona fide pledgee
8 without any purpose of evading parts 1 through 3 of this
9 chapter;

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

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

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

23 (ii) no commission or other remuneration is paid or
24 given directly or indirectly for soliciting any prospective
25 buyer; provided, however, that a commission may be paid to a

1 registered broker-dealer if the securities involved are
2 registered with the United States securities and exchange
3 commission under the federal Securities Act of 1933, as
4 amended.

5 (b) For the purpose of the exemption provided for in
6 subsection (8)(a), an offer to sell is made in this state,
7 whether or not the offeror or any of the offerees is then
8 present in this state, if the offer either originates from
9 this state or is directed by the offeror to this state and
10 received at the place to which it is directed (or at any
11 post office in this state in the case of a mailed offer).

12 (9) any offer or sale of a preorganization certificate
13 or subscription if:

14 (a) no commission or other remuneration is paid or
15 given directly or indirectly for soliciting any prospective
16 subscriber;

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

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

19 (10) any transaction pursuant to an offer to existing
20 security holders of the issuer, including persons who at the
21 time of the transaction are holders of convertible
22 securities, nontransferable warrants, or transferable
23 warrants exercisable within not more than 90 days of their
24 issuance, if:

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly
2 for soliciting any security holder in this state; or

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

6 (11) any offer (but not a sale) of a security for which
7 registration statements have been filed under both parts 1
8 through 3 of this chapter and the Securities Act of 1933 if
9 no stop, refusal, denial, suspension, or revocation order is
10 in effect and no public proceeding or examination looking
11 toward such an order is pending under either law;

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

17 (13) the issuance of any stock dividend, whether the
18 corporation distributing the dividend is the issuer of the
19 stock or not, if nothing of value is given by stockholders
20 for the distribution other than the surrender of a right to
21 a cash dividend where the stockholder can elect to take a
22 dividend in cash or stock;

23 (14) any transaction incident to a right of conversion
24 or a statutory or judicially approved reclassification,
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or
2 sale of assets;

3 (15) any transaction in compliance with such rules as
4 the commissioner in his discretion may adopt to serve the
5 purposes of 30-10-102. The commissioner may in his
6 discretion require that 30-10-201 through 30-10-207 apply to
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital
9 company as defined in 90-8-104, provided that such company
10 first files all disclosure documents, along with a consent
11 to service of process, with the commissioner. The
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded
14 on a commodities exchange recognized by the commissioner at
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of
17 the commodity futures trading commission as granted under
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious
21 metals; and

22 (b) requires, and under which the purchaser receives
23 within 7 calendar days after payment in good funds of any
24 portion of the purchase price, physical delivery of the
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have
 2 occurred if, within the 7-day period, the quantity of
 3 precious metals, whether in specifically segregated or
 4 fungible bulk, purchased by such payment is delivered into
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,
 7 savings institution, or trust company organized under or
 8 supervised pursuant to the laws of the United States or of
 9 this state);

10 (B) is a depository the warehouse receipts of which
 11 are recognized for delivery purposes for any commodity on a
 12 contract market designated by the commodity futures trading
 13 commission; or

14 (C) is a storage facility licensed by the United
 15 States or any agency of the United States; and

16 (ii) issues, and the purchaser receives, a certificate,
 17 document of title, confirmation, or other instrument
 18 evidencing that such quantity of precious metals has been
 19 delivered to the depository and is being and will continue
 20 to be held on the purchaser's behalf, free and clear of all
 21 liens and encumbrances other than:

22 (A) liens of the purchaser;
 23 (B) tax liens;
 24 (C) liens agreed to by the purchaser; or
 25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment
 3 contract solely between persons engaged in producing,
 4 processing, using commercially, or handling as merchants
 5 each commodity subject to the contract or any byproduct of
 6 the commodity;

7 (21) any offer or sale of a security to an employee of
 8 the issuer, pursuant to an employee stock ownership plan
 9 qualified under section 401 of the Internal Revenue Code of
 10 1986;

11 [(22) any offer or sale of a membership share issued by
 12 an employee cooperative corporation organized under the
 13 provisions of Senate Bill No. 246 (LC 1149)]."

14 NEW SECTION. Section 7. Coordination. If [SENATE Bill
 15 No. 246 (LC 1149)] is not passed and approved, the
 16 references to [SENATE Bill No. 246 (LC 1149)] in [sections 1
 17 through 7 6] are void and must be deleted by the code
 18 commissioner.

19 ~~NEW SECTION. Section 9. Effective date. [This act]~~
 20 ~~is effective July 17, 1989.~~

21 NEW SECTION. SECTION 8. EFFECTIVE DATE. [THIS ACT]
 22 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

GOVERNOR'S AMENDMENTS
TO SENATE BILL 215
(REFERENCE COPY)
April 15, 1989

1. Page 2, line 2.
Strike: "enterprise"
Insert: "corporation"
2. Page 2, line 3
Strike: subsection (1)(a) in its entirety
Renumber subsequent subsections

-END-

SENATE BILL NO. 215

INTRODUCED BY HALLIGAN, HARPER, PIPINICH,

BRADLEY, WILLIAMS, RAPP-SVRCEK

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "THE "EMPLOYEE OWNERSHIP OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION; AND AMENDING SECTION 30-10-104 30-10-105, MCA, AND PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 6 5] may be cited as the "Employee Ownership Opportunity Act".

NEW SECTION. Section 2. Employee ownership development policy. It is the policy of this state to encourage the formation of employee-owned enterprises in order to stabilize local economies, to anchor business activity by increasing and broadening community investments, to increase productivity, and to encourage new capital formation through employee ownership.

NEW SECTION. Section 3. Definitions. As used in [sections 2 through 6 5], the following definitions apply:

(1) "Employee-owned enterprise" means a business enterprise CORPORATION that:

~~{a}--is--organized-as {a-cooperative-corporation-formed pursuant-to-the-provisions-of-{SENATE Bill-No- 246 {b2-1149} or}-an-employee-stock-ownership-plan--formed--pursuant--to section--4975{e}{7}-of-the-Internal-Revenue-Code-of-1986,-as amended;~~

~~{b}{A}~~ requires that at least a majority of its employees:

(i) are vested with stock in the enterprise and all of whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted so that the vote of a majority of the employees control the vote of a majority of shares;

~~{c}{B}~~ requires that voting rights on corporate matters for shares held in trust for the employees pass through to those employees at least to the extent required by the voting requirements of section 409(e) of the Internal Revenue Code of 1986, as amended;

~~{d}{C}~~ provides vested employees the right to vote on corporate matters, including merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale; and

~~{e}{D}~~ requires that at least a majority of the members of the board of directors is elected by the

1 employees of the enterprise.

2 (2) "Employee ownership group" means a group that may
3 include a corporation, labor organization, or other groups
4 of persons voluntarily affiliated for the purpose of
5 actively engaging in an effort to establish an
6 employee-owned enterprise.

7 NEW SECTION. **Section 4.** Extension of business
8 assistance services to employee-owned enterprises. A
9 business assistance program operated by the state must
10 include employee-owned enterprises within the scope of its
11 business assistance activities. An employee-owned enterprise
12 is eligible for assistance, service, or financing available
13 through any business assistance program receiving state
14 money.

15 NEW SECTION. **Section 5.** Department to offer employee
16 ownership development services. The department of commerce
17 shall:

18 (1) compile, organize, and make available to the
19 public a library of resources on the subject of employee
20 ownership and participatory management;

21 (2) research the role of employee ownership in
22 successful state and local economic development programs of
23 other states;

24 (3) provide public education on the beneficial aspects
25 of employee-owned enterprises;

1 (4) conduct seminars, workshops, and conferences to
2 increase awareness of the benefits found to be common to
3 employee-owned enterprises. At least one seminar must be
4 held annually for public officials dealing with economic
5 development, business assistance, and business financing
6 programs.

7 (5) provide technical assistance and counseling on the
8 establishment and management of employee-owned enterprises.

9 ~~NEW SECTION. Section 6. Report to the legislature.~~
10 ~~The department of commerce shall report to each regular~~
11 ~~session of the legislature on:~~

12 ~~(1) steps that the department, through its business~~
13 ~~assistance and business financing programs, has taken to~~
14 ~~encourage the formation and development of employee-owned~~
15 ~~enterprises and participatory management practices; and~~

16 ~~(2) recommendations for future legislative or~~
17 ~~executive action to more effectively utilize employee-owned~~
18 ~~enterprises to stabilize local economies.~~

19 ~~Section 7. Section 30-10-104, MCA, is amended to read:~~

20 ~~"30-10-104. Exempt securities. Sections 30-10-202~~
21 ~~through 30-10-207 do not apply to any of the following~~
22 ~~securities:~~

23 ~~(1) any security (including a revenue obligation)~~
24 ~~issued or guaranteed by the United States, any state, any~~
25 ~~political subdivision of a state, or any agency or corporate~~

1 or other instrumentality of one or more of the foregoing;
 2 provided, however, 30-10-202 through 30-10-207 apply to a
 3 security issued by any of the foregoing that is payable
 4 solely from payments to be received in respect of property
 5 or money used under a lease, sale, or loan arrangement by or
 6 for a nongovernmental industrial or commercial enterprise,
 7 unless such enterprise or any security of which it is the
 8 issuer is within any of the exemptions enumerated in
 9 subsections (2) through (13) (15) of this section;
 10 (2) any security issued or guaranteed by Canada, any
 11 Canadian province, any political subdivision of any such
 12 province, or any agency or corporate or other
 13 instrumentality of one or more of the foregoing or any other
 14 foreign government with which the United States currently
 15 maintains diplomatic relations if the security is recognized
 16 as a valid obligation by the issuer or guarantor;
 17 (3) any security issued by and representing an
 18 interest in or a debt of or guaranteed by any bank organized
 19 under the laws of the United States or any bank, savings
 20 institution, or trust company organized and supervised under
 21 the laws of any state;
 22 (4) any security issued by and representing an
 23 interest in or a debt of or guaranteed by any federal
 24 savings and loan association or any building and loan or
 25 similar association organized under the laws of any state

1 and authorized to do business in this state;
 2 (5) any security issued or guaranteed by any federal
 3 credit union or any credit union, industrial loan
 4 association, or similar association organized and supervised
 5 under the laws of this state;
 6 (6) any security issued or guaranteed by any railroad,
 7 other common carrier, public utility, or holding company
 8 which is:
 9 (a) subject to the jurisdiction of the interstate
 10 commerce commission;
 11 (b) a registered holding company under the Public
 12 Utility Holding Company Act of 1935 or a subsidiary of such
 13 a company within the meaning of that act;
 14 (c) regulated in respect of its rates and charges by a
 15 governmental authority of the United States or any state or
 16 municipality; or
 17 (d) regulated in respect to the issuance or guarantee
 18 of the security by a governmental authority of the United
 19 States, any state, Canada, or any Canadian province, also
 20 equipment trust certificates in respect to equipment
 21 conditionally sold or leased to a railroad or public utility
 22 if other securities issued by such railroad or public
 23 utility would be exempt under this subsection;
 24 (7) any security that meets all of the following
 25 conditions:

1 (a)--if-the-issuer-is-not-organized-under-the-laws-of
2 the--United--States--or--a--state,--it--has-appointed-a-duiy
3 authorized-agent-in-the-United-States-for-service-of-process
4 and-has-set-forth-the-name-and-address-of-such-agent-in-its
5 prospectus;

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

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

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

16 (ii)--rentals--under--leases--with--terms--of-3-years-or
17 more;

18 (d)--the-issuer-has-had-consolidated-net-income-(before
19 extraordinary-items-and-the-cumulative-effect-of--accounting
20 changes)--of--at--least-\$1-million-in-4-of-its-last-5-fiscal
21 years,--including-its-last-fiscal-year,--and-if-the-offering
22 is--of--interest-bearing--securities,--has--had-for-its-last
23 fiscal-year-such-net-income,--but-before-deduction-for-income
24 taxes-and-depreciation,--of-at-least-1-1/2-times-the-issuer's
25 annual-interest--expense,--giving--effect--to--the--proposed

1 offering--and-the-intended-use-of-the-proceeds:--"last-fiscal
2 year"--as-used-in-this--subsection--(7)(d),--means--the--most
3 recent--year--for--which--audited--financial--statements--are
4 available,--provided-that--such--statements--cover--a--fiscal
5 period--ended--not-more-than-15-months-from-the-commencement
6 of-the-offering;

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

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

1 {8}--any security issued by any person organized and
 2 operated not for private profit but exclusively for
 3 religious, educational, benevolent, charitable, fraternal,
 4 social, athletic, or reformatory purposes if the issuer pays
 5 a fee of \$50 and files with the commissioner 20 days prior
 6 to the offering a written notice specifying the terms of the
 7 offer and the commissioner does not disallow the exemption
 8 in writing within such 20-day period;

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

17 {10}--any investment contract issued in connection with
 18 an employee's stock purchase, savings, pension,
 19 profit-sharing, or similar benefit plan;

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

24 {12}--any security listed or approved for listing upon
 25 notice of issuance on the New York stock exchange, the

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

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

19 {14}--any membership shares issued by an employee
 20 cooperative corporation organized under the provisions of
 21 {B11-No. {BE-1149}};

22 {15}--any securities issued by an employee stock
 23 ownership plan that meets the requirements for qualification
 24 under section 401 of the Internal Revenue Code of 1986;"

25 **SECTION 6. SECTION 30-10-105, MCA, IS AMENDED TO READ:**

1 **"30-10-105. Exempt transactions.** Except as in this
 2 section expressly provided, 30-10-201 through 30-10-207
 3 shall not apply to any of the following transactions:

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

8 (2) (a) any nonissuer distribution of an outstanding
 9 security by a broker-dealer registered pursuant to 30-10-201
 10 if:

11 (i) quotations for the securities to be offered or
 12 sold (or the securities issuable upon exercise of any
 13 warrant or right to purchase or subscribe to such
 14 securities) are reported by the automated quotations system
 15 operated by the national association of securities dealers,
 16 inc., (NASDAQ) or by any other quotation system approved by
 17 the commissioner by rule; or

18 (ii) the security has a fixed maturity or a fixed
 19 interest or dividend provision and there has been no default
 20 during the current fiscal year or within the 3 preceding
 21 fiscal years, or during the existence of the issuer and any
 22 predecessors if less than 3 years, in the payment of
 23 principal, interest, or dividends on the security.

24 (b) The commissioner may by order deny or revoke the
 25 exemption specified in subsection (2)(a) with respect to a

1 specific security. Upon the entry of such an order, the
 2 commissioner shall promptly notify all registered
 3 broker-dealers that it has been entered and of the reasons
 4 therefor and that within 15 days of the receipt of a written
 5 request the matter will be set down for hearing. If no
 6 hearing is requested and none is ordered by the
 7 commissioner, the order will remain in effect until it is
 8 modified or vacated by the commissioner. If a hearing is
 9 requested or ordered, the commissioner, after notice of and
 10 opportunity for hearing to all interested persons, may
 11 modify or vacate the order or extend it until final
 12 determination. No order under this subsection may operate
 13 retroactively. No person may be considered to have violated
 14 parts 1 through 3 of this chapter by reason of any offer or
 15 sale effected after the entry of an order under this
 16 subsection if he sustains the burden of proof that he did
 17 not know and in the exercise of reasonable care could not
 18 have known of the order.

19 (3) any nonissuer transaction effected by or through a
 20 registered broker-dealer pursuant to an unsolicited order or
 21 offer to buy, but the commissioner may require that the
 22 customer acknowledge upon a specified form that the sale was
 23 unsolicited and that a signed copy of each form be preserved
 24 by the broker-dealer for a specified period;

25 (4) any transaction between the issuer or other person

1 on whose behalf the offering is made and an underwriter or
2 among underwriters;

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

7 (6) any transaction executed by a bona fide pledgee
8 without any purpose of evading parts 1 through 3 of this
9 chapter;

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

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

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

23 (ii) no commission or other remuneration is paid or
24 given directly or indirectly for soliciting any prospective
25 buyer; provided, however, that a commission may be paid to a

1 registered broker-dealer if the securities involved are
2 registered with the United States securities and exchange
3 commission under the federal Securities Act of 1933, as
4 amended.

5 (b) For the purpose of the exemption provided for in
6 subsection (8)(a), an offer to sell is made in this state,
7 whether or not the offeror or any of the offerees is then
8 present in this state, if the offer either originates from
9 this state or is directed by the offeror to this state and
10 received at the place to which it is directed (or at any
11 post office in this state in the case of a mailed offer).

12 (9) any offer or sale of a preorganization certificate
13 or subscription if:

14 (a) no commission or other remuneration is paid or
15 given directly or indirectly for soliciting any prospective
16 subscriber;

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

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

19 (10) any transaction pursuant to an offer to existing
20 security holders of the issuer, including persons who at the
21 time of the transaction are holders of convertible
22 securities, nontransferable warrants, or transferable
23 warrants exercisable within not more than 90 days of their
24 issuance, if:

25 (a) no commission or other remuneration (other than a

1 standby commission) is paid or given directly or indirectly
2 for soliciting any security holder in this state; or

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

6 (11) any offer (but not a sale) of a security for which
7 registration statements have been filed under both parts 1
8 through 3 of this chapter and the Securities Act of 1933 if
9 no stop, refusal, denial, suspension, or revocation order is
10 in effect and no public proceeding or examination looking
11 toward such an order is pending under either law;

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

17 (13) the issuance of any stock dividend, whether the
18 corporation distributing the dividend is the issuer of the
19 stock or not, if nothing of value is given by stockholders
20 for the distribution other than the surrender of a right to
21 a cash dividend where the stockholder can elect to take a
22 dividend in cash or stock;

23 (14) any transaction incident to a right of conversion
24 or a statutory or judicially approved reclassification,
25 recapitalization, reorganization, quasi-reorganization,

1 stock split, reverse stock split, merger, consolidation, or
2 sale of assets;

3 (15) any transaction in compliance with such rules as
4 the commissioner in his discretion may adopt to serve the
5 purposes of 30-10-102. The commissioner may in his
6 discretion require that 30-10-201 through 30-10-207 apply to
7 any or all transactional exemptions adopted by rule.

8 (16) any transaction by a certified Montana capital
9 company as defined in 90-8-104, provided that such company
10 first files all disclosure documents, along with a consent
11 to service of process, with the commissioner. The
12 commissioner may not charge a fee for the filing.

13 (17) the sale of a commodity investment contract traded
14 on a commodities exchange recognized by the commissioner at
15 the time of sale;

16 (18) transaction within the exclusive jurisdiction of
17 the commodity futures trading commission as granted under
18 the Commodity Exchange Act;

19 (19) a transaction that:

20 (a) involves the purchase of one or more precious
21 metals; and

22 (b) requires, and under which the purchaser receives
23 within 7 calendar days after payment in good funds of any
24 portion of the purchase price, physical delivery of the
25 quantity of the precious metals purchased. For the purposes

1 of this subsection, physical delivery is considered to have
 2 occurred if, within the 7-day period, the quantity of
 3 precious metals, whether in specifically segregated or
 4 fungible bulk, purchased by such payment is delivered into
 5 the possession of a depository (other than the seller) that:

6 (i) (A) is a financial institution (meaning a bank,
 7 savings institution, or trust company organized under or
 8 supervised pursuant to the laws of the United States or of
 9 this state);

10 (B) is a depository the warehouse receipts of which
 11 are recognized for delivery purposes for any commodity on a
 12 contract market designated by the commodity futures trading
 13 commission; or

14 (C) is a storage facility licensed by the United
 15 States or any agency of the United States; and

16 (ii) issues, and the purchaser receives, a certificate,
 17 document of title, confirmation, or other instrument
 18 evidencing that such quantity of precious metals has been
 19 delivered to the depository and is being and will continue
 20 to be held on the purchaser's behalf, free and clear of all
 21 liens and encumbrances other than:

22 (A) liens of the purchaser;

23 (B) tax liens;

24 (C) liens agreed to by the purchaser; or

25 (D) liens of the depository for fees and expenses that

1 previously have been disclosed to the purchaser.

2 (20) a transaction involving a commodity investment
 3 contract solely between persons engaged in producing,
 4 processing, using commercially, or handling as merchants
 5 each commodity subject to the contract or any byproduct of
 6 the commodity;

7 (21) any offer or sale of a security to an employee of
 8 the issuer, pursuant to an employee stock ownership plan
 9 qualified under section 401 of the Internal Revenue Code of
 10 1986;

11 [(22) any offer or sale of a membership share issued by
 12 an employee cooperative corporation organized under the
 13 provisions of Senate Bill No. 246 (LC 1149)]."

14 NEW SECTION. Section 7. Coordination. If [SENATE Bill
 15 No. 246 (LC 1149)] is not passed and approved, the
 16 references to [SENATE Bill No. 246 (LC 1149)] in [sections 1
 17 through 7 6] are void and must be deleted by the code
 18 commissioner.

19 ~~NEW SECTION. Section 9. Effective date. [This act]~~
 20 ~~is effective July 1, 1989.~~

21 NEW SECTION. SECTION 8. EFFECTIVE DATE. [THIS ACT]
 22 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-