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House BILL NO. *287*

INTRODUCED BY *Wiseman, Johnson, Egan*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING THE ACTIVITIES OF FEDERAL COVERED ADVISERS; EXEMPTING MONTANA FROM THE PROVISIONS OF THE PHILANTHROPY PROTECTION ACT; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107, 30-10-110, 30-10-201, 30-10-202, 30-10-207, 30-10-209, AND 30-10-303, MCA."

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

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

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

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

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

(ii) a person who does not have a place of business in this state if the person 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.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

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

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

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

4 (iv) foreign currency; and

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

6 (b) Commodity does not include:

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

9 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
10 and offered and sold by the owner or lessee of the real property; or

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

13 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
14 effective date of this subsection.

15 (5) "Commodity futures trading commission" means the independent regulatory agency established
16 by congress to administer the Commodity Exchange Act.

17 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
18 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
19 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
20 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
21 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
22 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
23 the contrary, is presumed to be offered or sold for speculation or investment purposes.

24 (b) A commodity investment contract does not include a contract or agreement that requires, and
25 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
26 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
27 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
28 total amount of each commodity to be purchased under the contract or agreement when the commodity
29 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien
30 arises in connection with the purchase of each commodity or commodities.

1 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the
2 account, agreement, or contract the right but not the obligation to purchase or sell one or more
3 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
4 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

7 (8) (a) "Federal covered adviser" means a person who is:

8 (i) registered under section 203 of the Investment Advisers Act of 1940; or

9 (ii) excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment
10 Advisers Act of 1940.

11 (b) A person acting as a federal investment adviser who has not promptly remedied the
12 nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the
13 nonpayment or underpayment from the commissioner is not a federal covered adviser.

14 (9) (a) "Federal covered security" means a security that is a covered security under section 18(b)
15 of the Securities Act of 1933 or rules promulgated by the commissioner.

16 (b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been
17 paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after
18 written notification from the commissioner has been received is not a federal covered security.

19 ~~(8)(10)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

20 ~~(9)(11)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business
21 of advising others, either directly or through publications or writings, as to the value of securities or as to
22 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
23 a regular business, issues or promulgates analyses or reports concerning securities.

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

25 (i) as an integral component of other financially related services, provides the investment advisory
26 services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

27 (ii) represents to any person that the financial planner or other person provides the investment
28 advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

29 (c) Investment adviser does not include:

30 (i) an investment adviser representative;

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

2 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
3 of the person's profession or who does not accept or receive, directly or indirectly, any commission,
4 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
5 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
6 securities for investment purposes;

7 (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(a)
8 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
9 compensation;

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

14 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
15 30-10-104(1);

16 (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(a)
17 is solely incidental to the practice of the person's profession; ~~or~~

18 (viii) a federal covered adviser; or

19 ~~(viii)(ix)~~ (ix) other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by
20 rule or order designate.

21 ~~(10)(12)~~ (a) "Investment adviser representative" means any partner of, officer of, director of, or
22 a person occupying a similar status or performing similar functions, or other individual employed by or
23 associated with an investment adviser, except clerical or ministerial personnel, who:

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

25 (ii) manages accounts or portfolios of clients;

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

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

28 (b) Investment adviser representative does not include a salesperson registered pursuant to
29 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental
30 to the conduct of business as a salesperson and for which the salesperson does not receive special

1 compensation other than fees relating to the solicitation or offering of investment advisory services of a
2 registered investment adviser.

3 ~~(11)~~(13) "Issuer" means any person who issues or proposes to issue any security, except that with
4 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
5 certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~for~~
6 persons performing similar functions, ~~or of the fixed, restricted management, or unit type, the term "issuer"~~
7 means the person or persons performing the acts and assuming the duties of depositor or manager pursuant
8 to the provisions of the trust or other agreement or instrument under which the security is issued.

9 ~~(12)~~(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

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

14 ~~(14)~~(16) "Precious metal" means the following, in coin, bullion, or other form:

- 15 (a) silver;
- 16 (b) gold;
- 17 (c) platinum;
- 18 (d) palladium;
- 19 (e) copper; and
- 20 (f) other items as the commissioner may by rule or order specify.

21 ~~(15)~~(17) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

22 ~~(16)~~(18) (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a
23 security or interest in a security for value.

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

26 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
27 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
28 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or
29 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
30 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert

1 into another security of the same or another issuer, is considered to include an offer of the other security.

2 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents a
3 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
4 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
5 Salesperson does not include an individual who represents:

6 (a) an issuer in:

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

8 ~~(b)~~(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson,
9 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

10 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
11 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;

12 or

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

15 or

16 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
17 of the Securities Exchange Act of 1934.

18 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
19 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
20 mean the federal statutes of those names ~~as amended before or after July 1, 1961.~~

21 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
22 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
23 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription;
24 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
25 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
26 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
27 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
28 any interest in a security or based on the value of a security, or any certificate of interest or participation
29 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
30 purchase any of the foregoing.

1 (b) Security does not include an insurance or endowment policy or annuity contract under which
 2 an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life
 3 or some other specified period.

4 ~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the
 5 District of Columbia and Puerto Rico.

6 ~~(21)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms
 7 "sale", "sell", and "offer".
 8

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

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

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

19 (2) any security issued or guaranteed by Canada, ~~any~~ a Canadian province, ~~any~~ a political
 20 subdivision of ~~any such~~ a province, or ~~any an~~ an agency or corporate or other instrumentality of one or more
 21 of the foregoing or any other foreign government with which the United States currently maintains
 22 diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

23 (3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any~~ a bank
 24 organized under the laws of the United States or ~~any~~ a bank, savings institution, or trust company
 25 organized and supervised under the laws of any state;

26 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any~~ a
 27 federal savings and loan association or ~~any~~ a building and loan or similar association organized under the
 28 laws of any state and authorized to do business in this state;

29 (5) any security issued or guaranteed by ~~any~~ a federal credit union or ~~any~~ a credit union, industrial
 30 loan association, or similar association organized and supervised under the laws of this state;

- 1 (6) any security issued or guaranteed by ~~any~~ a railroad, other common carrier, public utility, or
 2 holding company which is:
- 3 (a) subject to the jurisdiction of the interstate commerce commission;
- 4 (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a
 5 subsidiary of ~~such~~ a registered holding company within the meaning of that act;
- 6 (c) regulated in respect of its rates and charges by a governmental authority of the United States
 7 or any state or municipality; or
- 8 (d) regulated in respect to the issuance or guarantee of the security by a governmental authority
 9 of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in
 10 respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by
 11 ~~such~~ the railroad or public utility would be exempt under this subsection;
- 12 (7) any security that meets all of the following conditions:
- 13 (a) if the issuer is not organized under the laws of the United States or a state, it has appointed
 14 a duly authorized agent in the United States for service of process and has set forth the name and address
 15 of ~~such~~ the agent in its prospectus;
- 16 (b) a class of the issuer's securities is required to be and is registered under section 12 of the
 17 Securities Exchange Act of 1934 and has been ~~so~~ registered for the 3 years immediately preceding the
 18 offering date;
- 19 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
 20 7 years, ~~for~~ during the issuer's existence if that period is less than 7 years, in the payment of:
- 21 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
 22 borrowed money; or
- 23 (ii) rentals under leases with terms of 3 years or more;
- 24 (d) the issuer has had consolidated net income, ~~before extraordinary items and the cumulative~~
 25 ~~effect of accounting changes,~~ of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
 26 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but
 27 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
 28 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year",
 29 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
 30 available, provided that ~~such~~ the statements cover a fiscal period ended not more than 15 months from the

1 commencement of the offering.

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

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

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

18 (9) any commercial paper ~~which~~ that arises out of a current transaction or the proceeds of which
19 have been or are to be used for the current transaction and ~~which~~ that evidences an obligation to pay cash
20 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such~~ the paper
21 which is likewise limited or any guarantee of ~~such~~ the paper or of any ~~such~~ renewal, when ~~such~~ the
22 commercial paper is sold to banks or insurance companies;

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

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

28 (12) any security listed or approved for listing upon notice of issuance on the New York stock
29 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
30 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any

1 other stock exchange registered with the federal securities and exchange commission and approved by the
 2 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
 3 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
 4 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
 5 otherwise condition the terms under which any security may be exempt under this subsection.

6 (13) any national market system security listed or approved for listing upon notice of issuance on
 7 the national association of securities dealers automated quotation system or any other national quotation
 8 system approved by the commissioner; any other security of the same issuer that is of senior or
 9 substantially equal rank; any security called for by subscription rights or warrants so listed or approved;
 10 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
 11 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
 12 may be exempt under this subsection.

13 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
 14 by any insurer organized and authorized to transact business under the laws of any state;

15 (15) any security for which an offer or sale is not directed to or received by a person in this state,
 16 and the issuer does not maintain a place of business in the state."

17

18 **Section 3.** Section 30-10-107, MCA, is amended to read:

19 **"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
 20 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
 21 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
 22 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
 23 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
 24 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
 25 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
 26 cooperate with the securities administrators of the other states and the securities and exchange commission
 27 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
 28 in the form and content of registration statements, applications, and reports wherever practicable.

29 (2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to
 30 use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~

1 not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes do not~~
 2 authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~
 3 information or the fact that any investigation is being made, except among themselves or when necessary
 4 or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

5 (3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~
 6 do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the
 7 commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined
 8 by judicial or other authority to be invalid for any reason.

9 (4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner ~~in~~
 10 ~~his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

11 (5) A document is filed when it is received by the commissioner. The commissioner shall keep a
 12 register of all applications for registration and registration statements ~~which that~~ are or have ever been
 13 effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which that~~
 14 have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public
 15 inspection. The information contained in or filed with any registration statement, application, or report may
 16 be made available to the public under ~~such~~ rules as the commissioner prescribes.

17 (6) Upon request and at ~~such a reasonable charges as he prescribes~~ charge, the commissioner shall
 18 furnish to any person photostatic or other copies, ~~{certified under his seal of office if requested,}~~ of any
 19 entry in the register or any document ~~which that~~ is a matter of public record. In any proceeding or
 20 prosecution under parts 1 through 3 of this chapter, any certified copy ~~se-certified~~ is prima facie evidence
 21 of the contents of the entry or document certified.

22 (7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and
 23 exchange commission, the commodity futures trading commission, the securities investor protection
 24 corporation, any national securities exchange, or national securities association registered under the
 25 Securities Exchange Act of 1934, any national or international organization of securities officials or
 26 agencies, and any governmental agency, corporation, or body.

27 (8) Except as specifically provided in this title, an order or notice may be given to a person by
 28 personal delivery or by mail addressed to that person at the person's last recorded principal place of
 29 business on file at the commissioner's office. An order or notice that is mailed is considered to have been
 30 given at the time it is mailed."

1 **Section 4.** Section 30-10-110, MCA, is amended to read:

2 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
3 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
4 to buy is made and accepted in this state.

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

7 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
8 either party is then present in this state, when the offer either originates from this state or is directed by
9 the offeror to this state and received at the place to which it is directed or at any post office in this state
10 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
11 ~~received by the offeree in this state is not made in this state.~~

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

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

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

21 (i) not published in this state; or

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

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

25 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers
26 and investment adviser representatives are concerned, apply when any act instrumental in effecting
27 prohibited conduct is done in this state, whether or not either party is then present in this state."
28

29 **Section 5.** Section 30-10-201, MCA, is amended to read:

30 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**

1 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact
 2 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person
 3 is registered under parts 1 through 3 of this chapter.

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

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

9 (a) the person is ~~se~~ registered under parts 1 through 3 of this chapter;

10 ~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

11 ~~(c)~~ (b) the person does not have a place of business in the state and the person's only clients in this
 12 state are:

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

15 (ii) other investment advisers;

16 (iii) federal covered advisers;

17 ~~(iii)~~ (iv) broker-dealers;

18 ~~(iv)~~ (v) banks;

19 ~~(v)~~ (vi) trust companies;

20 ~~(vi)~~ (vii) savings and loan associations;

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

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

24 ~~(ix)~~ (x) other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

25 ~~(d)~~ (c) the person does not have a place of business in this state and during any 12 consecutive
 26 months does not direct business communications in this state in any manner to more than five present or
 27 prospective clients, other than those specified in subsection (3)(e), whether or not the person or any of the
 28 persons to whom the communications are directed are then present in this state the preceding 12-month
 29 period the person has not had more than five clients who are residents of this state.

30 (4) Except for advisers whose only clients are clients listed in subsection (3)(b), it is unlawful for

1 a federal covered adviser to conduct advisory business in this state unless the federal covered adviser
2 complies with the provisions of subsection (6)(b).

3 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
4 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
5 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
6 3.

7 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
8 investment adviser representative who maintains a place of business in this state unless the investment
9 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
10 3.

11 ~~(4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
12 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
13 ~~representative may apply for registration by filing an application in the form that the commissioner~~
14 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
15 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
16 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
17 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
18 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
19 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
20 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
21 ~~who may suffer loss by reason of a failure to comply.~~

22 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b),
23 a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
24 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
25 securities and exchange commission that the commissioner requires by rule or order.

26 ~~(5)(7) The application must contain whatever information the commissioner requires. A registration~~
27 ~~application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may~~
28 ~~not be withdrawn before the commissioner approves or denies the registration, without the express written~~
29 ~~consent of the commissioner.~~

30 ~~(6)(8) When the registration requirements are met, the commissioner shall make the registration~~

1 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment
 2 adviser representative may not be withdrawn or terminated without the express written consent of the
 3 commissioner.

4 ~~(7)(9)~~ Except as provided in subsection (6), registration Registration of a broker-dealer, salesperson,
 5 investment adviser, or investment adviser representative:

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

8 (b) may be renewed pursuant to subsection (11).

9 ~~(8)(10)~~ (a) The registration of a salesperson is not effective during any period when the salesperson
 10 is not associated with an issuer or a registered broker-dealer specified in the application. When a
 11 salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson
 12 and the issuer or broker-dealer shall promptly notify the commissioner.

13 ~~(9)(b)~~ The registration of an investment adviser representative is not effective during any period
 14 when the person is not associated with an investment adviser registered under this act and specified in the
 15 application. When an investment adviser representative begins or terminates a connection with an
 16 investment adviser, the investment adviser shall promptly notify the commissioner. When an investment
 17 adviser representative begins or terminates a connection with a federal covered adviser, the investment
 18 adviser representative shall promptly notify the commissioner.

19 ~~(10)(11)~~ Registration of a broker-dealer, salesperson, investment adviser, or investment adviser
 20 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration
 21 of the registration or notice filing, an application containing information as the commissioner may require
 22 to indicate any material change in the information contained in the original application or any renewal
 23 application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser~~
 24 ~~representative filed by the applicant~~ or notice filing, and payment of the ~~prescribed~~ prescribed fee prescribed by
 25 30-10-209. ~~and, in the case of a~~ A broker-dealer who is not a member of NASD, inc., by filing is required
 26 to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days
 27 of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange
 28 Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a
 29 successor, to become effective upon approval of the commissioner.

30 ~~(11)(12)~~ (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case

1 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
 2 adviser, every Every registered broker-dealer and investment adviser shall make and keep accounts and
 3 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
 4 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3~~ years
 5 unless the period the commissioner prescribes ~~otherwise for particular types of records~~ by rule or order.
 6 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
 7 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
 8 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
 9 the protection of investors.

10 (b) The commissioner may require investment advisers to furnish or disseminate certain information
 11 as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

12 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
 13 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
 14 correcting amendment.

15 ~~(12)~~(13) The commissioner may by order deny, suspend, or revoke registration of any
 16 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
 17 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
 18 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
 19 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
 20 adviser:

21 (a) has filed an application for registration under this section that, as of its effective date or as of
 22 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
 23 or contained any statement that was, in the light of the circumstances under which it was made, false or
 24 misleading with respect to any material fact;

25 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
 26 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor
 27 law;

28 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
 29 business or any felony;

30 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging

1 in or continuing any conduct or practice involving any aspect of the securities business;

2 (e) is the subject of an order of the commissioner denying, suspending, or revoking registration as
3 a broker-dealer, salesperson, investment adviser, or investment adviser representative;

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

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

10 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
11 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
12 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
13 as to the broker-dealer or investment adviser;

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

16 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
17 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
18 corrected; or

19 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
20 representatives or employees to assure their compliance with this act.

21 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
22 of a fact or transaction known to the commissioner when registration became effective unless the
23 proceeding is instituted within 30 days after the date on which the registration became effective.

24 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
25 determination of any proceeding under this section.

26 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) of this section, the commissioner
27 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
28 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
29 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
30 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not

1 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
2 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
3 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
5 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
6 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
7 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
8 by order cancel the registration or application.

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

21 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
22 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
23 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
24 representative if the sole proprietor meets the examination requirements established by the commissioner
25 by rule.

26 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general
27 securities principal's examination is not required to also pass the uniform investment adviser law
28 examination. The commissioner shall by rule provide for a form that a person who passes the general
29 securities principal's examination shall file with the commissioner as a verification of having passed the
30 examination unless the commissioner can verify electronically that the person has passed the exam."

1 **Section 6.** Section 30-10-202, MCA, is amended to read:

2 "30-10-202. **Registration of securities.** It is unlawful for any person to offer or sell any security
3 in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under
4 30-10-105, unless:

5 (1) ~~such~~ the security is registered by notification, coordination, or qualification under parts 1
6 through 3 of this chapter; or

7 (2) for a federal covered security, the security has been filed with the commissioner pursuant to
8 [section 10] and the fee prescribed in 30-10-209 has been paid."

9

10 **Section 7.** Section 30-10-207, MCA, is amended to read:

11 "30-10-207. **Denial, suspension, and revocation of registration of securities.** (1) The commissioner
12 may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any
13 registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

14 (a) the registration statement, as of its effective date or as of any earlier date in the case of an
15 order denying effectiveness, is incomplete in any material respect or contains any statement ~~which~~ that
16 was, in the light of the circumstances under which it was made, false or misleading with respect to any
17 material fact;

18 (b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully
19 imposed under parts 1 through 3 of this chapter has been willfully violated, ~~in connection with the offering,~~
20 by:

21 (i) the person filing the registration statement;

22 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status
23 or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer,
24 but only if the person filing the registration statement is directly or indirectly controlled by or acting for the
25 issuer; or

26 (iii) any underwriter;

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

30 (i) the commissioner may not institute a proceeding against an effective registration statement

1 under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

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

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

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

8 (f) when a security is sought to be registered by notification, it is not eligible for ~~such~~
9 by notification;

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

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

15 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'
16 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
17 amounts or kinds of options.

18 (2) The commissioner may not enter a suspension or revocation order against an effective
19 registration statement on the basis of a fact or transaction known to ~~him~~ the commissioner when the
20 registration statement became effective.

21 (3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly
22 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
23 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
24 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ a hearing
25 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
26 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
27 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."
28

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

30 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1

1 through 3 of this chapter:

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

7 (b) Each succeeding year, a registration of securities or a notice filing of a federal covered security
8 may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and
9 payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering
10 price of the securities that are to be offered in this state during that year, ~~even though the maximum fee~~
11 ~~was paid the preceding year~~. The ~~additional registration~~ renewal fee may not be less than \$200 or more
12 than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase
13 the amount of securities to be offered.

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

20 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated
21 as a separate issuer of securities. The issuer shall pay a portfolio registration fee to be calculated as
22 provided in subsections (1)(a) through (1)(c). The portfolio registration fee collected by the commissioner
23 must be deposited in the state special revenue account provided for in 30-10-115.

24 (2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original
25 registration and \$200 for each annual renewal.

26 (b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original
27 registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson
28 who is dually registered as an investment adviser representative with a broker-dealer dually registered as
29 an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

30 (c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each

1 annual renewal.

2 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
3 cost to the department.

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

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

9 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
10 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
11 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
12 general fund."

13

14 **Section 9.** Section 30-10-303, MCA, is amended to read:

15 **"30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the (1)~~ The
16 fact that an application for registration under 30-10-201~~(4)~~(6) or a registration statement under 30-10-203,
17 30-10-204, or 30-10-205 has been filed ~~nor~~ or the fact that a person or security is effectively registered
18 ~~constitutes~~ does not constitute a finding by the commissioner that any document filed under parts 1
19 through 3 of this chapter is true, complete, and not misleading.

20 (2) Neither any such The fact that an application for registration has been filed or a person or
21 security effectively registered as provided in subsection (1) or ~~nor~~ the fact that an exemption or exception
22 is available for a security or a transaction ~~means~~ does not mean that the commissioner has passed in any
23 way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or
24 transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client
25 any representation inconsistent with this section."

26

27 **NEW SECTION. Section 10. Federal covered securities.** (1) The commissioner may require an
28 issuer to file any or all of the following documents with respect to a federal covered security provided for
29 in section 18(b)(2) of the Securities Act of 1933:

30 (a) documents that are part of a current federal registration statement filed with the securities and

1 exchange commission or amendments to a current registration statement filed with the securities and
2 exchange commission;

3 (b) a consent to the service of process signed by the issuer and payment of the fee required in
4 30-10-209; and

5 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
6 state.

7 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
8 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
9 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
10 fee prescribed in 30-10-209.

11 (3) The commissioner may require the filing of any document filed with the securities and exchange
12 commission under the Securities Act of 1933, with respect to a federal covered security under section
13 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
14 in 30-10-209.

15 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
16 covered security if the commissioner finds that the order is in the public interest and there is a failure to
17 comply with any requirement of this section.

18 (5) The commissioner may waive any of the provisions of this section.

19

20 **NEW SECTION. Section 11. Exemption.** The state of Montana is exempt from the provisions of
21 the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(c) of that act.

22

23 **NEW SECTION. Section 12. Codification instruction.** (1) [Section 10] is intended to be codified
24 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
25 to [section 10].

26 (2) [Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the
27 provisions of Title 30, chapter 10, apply to [section 11].

28

29 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0287, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act generally revising security laws.

ASSUMPTIONS:

1. This is a general house cleaning bill for the Securities Commissioner, State Auditor's Office, with no fiscal impact associated with the bill.

FISCAL IMPACT:

Passage of HB 287 will have no fiscal impact on the state.

 1-21-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/22/97
WILLIAM WISEMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0287, as introduced

HB 287

1 HOUSE BILL NO. 287

2 INTRODUCED BY WISEMAN, R. JOHNSON, EWER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST
5 OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE
6 EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE
7 SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR
8 ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS
9 OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING
10 THE ACTIVITIES OF FEDERAL COVERED ADVISERS; ~~EXEMPTING MONTANA FROM THE PROVISIONS OF~~
11 ~~THE PHILANTHROPY PROTECTION ACT~~; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107,
12 30-10-110, 30-10-201, 30-10-202, 30-10-207, 30-10-209, AND 30-10-303, MCA."

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

15
16 **Section 1.** Section 30-10-103, MCA, is amended to read:

17 **"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context
18 requires otherwise, the following definitions apply:

19 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in
20 securities for the account of others or for the person's own account.

21 (b) The term does not include:

22 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

23 (ii) a person who does not have a place of business in this state if the person effects transactions
24 in this state exclusively with or through the issuers of the securities involved in the transactions, other
25 broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies
26 as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial
27 institutions or institutional buyers, whether acting for themselves or as trustee.

28 (2) "Commissioner" means the securities commissioner of this state.

29 (3) (a) "Commodity" means:

30 (i) any agricultural, grain, or livestock product or byproduct;

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

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

4 (iv) foreign currency; and

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

6 (b) Commodity does not include:

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

9 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
10 and offered and sold by the owner or lessee of the real property; or

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

13 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
14 effective date of this subsection.

15 (5) "Commodity futures trading commission" means the independent regulatory agency established
16 by congress to administer the Commodity Exchange Act.

17 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
18 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
19 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
20 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
21 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
22 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
23 the contrary, is presumed to be offered or sold for speculation or investment purposes.

24 (b) A commodity investment contract does not include a contract or agreement that requires, and
25 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
26 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
27 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
28 total amount of each commodity to be purchased under the contract or agreement when the commodity
29 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien
30 arises in connection with the purchase of each commodity or commodities.

1 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the
 2 account, agreement, or contract the right but not the obligation to purchase or sell one or more
 3 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
 4 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

7 (8) (a) "Federal covered adviser" means a person who is:

8 (i) registered under section 203 of the Investment Advisers Act of 1940; or

9 (ii) excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment
 10 Advisers Act of 1940.

11 (b) A person acting as a federal investment adviser who has not promptly remedied the
 12 nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the
 13 nonpayment or underpayment from the commissioner is not a federal covered adviser.

14 (9) (a) "Federal covered security" means a security that is a covered security under section 18(b)
 15 of the Securities Act of 1933 or rules promulgated by the commissioner.

16 (b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been
 17 paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after
 18 written notification from the commissioner has been received is not a federal covered security.

19 ~~(8)(10)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

20 ~~(9)(11)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business
 21 of advising others, either directly or through publications or writings, as to the value of securities or as to
 22 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
 23 a regular business, issues or promulgates analyses or reports concerning securities.

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

25 (i) as an integral component of other financially related services, provides the investment advisory
 26 services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

27 (ii) represents to any person that the financial planner or other person provides the investment
 28 advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

29 (c) Investment adviser does not include:

30 (i) an investment adviser representative;

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

2 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
3 of the person's profession or who does not accept or receive, directly or indirectly, any commission,
4 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
5 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
6 securities for investment purposes;

7 (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(a)
8 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
9 compensation;

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

14 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
15 30-10-104(1);

16 (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(a)
17 is solely incidental to the practice of the person's profession; ~~or~~

18 (viii) a federal covered adviser; or

19 ~~(viii)(ix)~~ other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by
20 rule or order designate.

21 ~~(10)(12)~~ (a) "Investment adviser representative" means any partner of, officer of, director of, or
22 a person occupying a similar status or performing similar functions, or other individual employed by or
23 associated with an investment adviser, except clerical or ministerial personnel, who:

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

25 (ii) manages accounts or portfolios of clients;

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

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

28 (b) Investment adviser representative does not include a salesperson registered pursuant to
29 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental
30 to the conduct of business as a salesperson and for which the salesperson does not receive special

1 compensation other than fees relating to the solicitation or offering of investment advisory services of a
2 registered investment adviser.

3 ~~(11)~~(13) "Issuer" means any person who issues or proposes to issue any security, except that with
4 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
5 certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~for~~
6 persons performing similar functions, ~~or of the fixed, restricted management, or unit type, the term "issuer"~~
7 means the person or persons performing the acts and assuming the duties of depositor or manager pursuant
8 to the provisions of the trust or other agreement or instrument under which the security is issued.

9 ~~(12)~~(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

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

14 ~~(14)~~(16) "Precious metal" means the following, in coin, bullion, or other form:

15 (a) silver;

16 (b) gold;

17 (c) platinum;

18 (d) palladium;

19 (e) copper; and

20 (f) other items as the commissioner may by rule or order specify.

21 ~~(15)~~(17) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

22 ~~(16)~~(18) (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a
23 security or interest in a security for value.

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

26 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
27 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
28 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or
29 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
30 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert

1 into another security of the same or another issuer, is considered to include an offer of the other security.

2 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents a
3 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
4 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
5 Salesperson does not include an individual who represents:

6 (a) an issuer in:

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

8 ~~(b)~~(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson,
9 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

10 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
11 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;

12 or

13 ~~(a)~~(iv) effecting transactions with existing employees, partners, or directors of the issuer if no
14 commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

15 or

16 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
17 of the Securities Exchange Act of 1934.

18 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
19 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
20 mean the federal statutes of those names ~~as amended before or after July 1, 1961.~~

21 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
22 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
23 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription;
24 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
25 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
26 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
27 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
28 any interest in a security or based on the value of a security, or any certificate of interest or participation
29 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
30 purchase any of the foregoing.

1 (b) Security does not include an insurance or endowment policy or annuity contract under which
 2 an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life
 3 or some other specified period.

4 ~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the
 5 District of Columbia and Puerto Rico.

6 ~~(21)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms
 7 "sale", "sell", and "offer".
 8

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

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

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

19 (2) any security issued or guaranteed by Canada, ~~any~~ a Canadian province, ~~any~~ a political
 20 subdivision of ~~any such~~ a province, or ~~any~~ an agency or corporate or other instrumentality of one or more
 21 of the foregoing or any other foreign government with which the United States currently maintains
 22 diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

23 (3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any~~ a bank
 24 organized under the laws of the United States or ~~any~~ a bank, savings institution, or trust company
 25 organized and supervised under the laws of any state;

26 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any~~ a
 27 federal savings and loan association or ~~any~~ a building and loan or similar association organized under the
 28 laws of any state and authorized to do business in this state;

29 (5) any security issued or guaranteed by ~~any~~ a federal credit union or ~~any~~ a credit union, industrial
 30 loan association, or similar association organized and supervised under the laws of this state;

1 (6) any security issued or guaranteed by ~~any~~ a railroad, other common carrier, public utility, or
 2 holding company which is:

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

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

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

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

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

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

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

19 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
 20 7 years, ~~{or during the issuer's existence if that period is less than 7 years}~~, in the payment of:

21 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
 22 borrowed money; or

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

24 (d) the issuer has had consolidated net income, ~~{before extraordinary items and the cumulative~~
 25 ~~effect of accounting changes}~~, of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
 26 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but
 27 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
 28 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year",
 29 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
 30 available, provided that ~~such~~ the statements cover a fiscal period ended not more than 15 months from the

1 commencement of the offering.

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

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

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

18 (9) any commercial paper ~~which~~ that arises out of a current transaction or the proceeds of which
19 have been or are to be used for the current transaction and ~~which~~ that evidences an obligation to pay cash
20 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such~~ the paper
21 which is likewise limited or any guarantee of ~~such~~ the paper or of any ~~such~~ renewal, when ~~such~~ the
22 commercial paper is sold to banks or insurance companies;

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

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

28 (12) any security listed or approved for listing upon notice of issuance on the New York stock
29 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
30 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any

1 other stock exchange registered with the federal securities and exchange commission and approved by the
 2 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
 3 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
 4 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
 5 otherwise condition the terms under which any security may be exempt under this subsection.

6 (13) any national market system security listed or approved for listing upon notice of issuance on
 7 the national association of securities dealers automated quotation system or any other national quotation
 8 system approved by the commissioner; any other security of the same issuer that is of senior or
 9 substantially equal rank; any security called for by subscription rights or warrants so listed or approved;
 10 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
 11 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
 12 may be exempt under this subsection.

13 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
 14 by any insurer organized and authorized to transact business under the laws of any state;

15 (15) any security for which an offer or sale is not directed to or received by a person in this state,
 16 and the issuer does not maintain a place of business in the state."

17

18 **Section 3.** Section 30-10-107, MCA, is amended to read:

19 **"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
 20 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
 21 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
 22 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
 23 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
 24 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
 25 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
 26 cooperate with the securities administrators of the other states and the securities and exchange commission
 27 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
 28 in the form and content of registration statements, applications, and reports wherever practicable.

29 (2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to
 30 use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~

1 not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes~~ do not
 2 authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~
 3 information or the fact that any investigation is being made, except among themselves or when necessary
 4 or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

5 (3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~
 6 do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the
 7 commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined
 8 by judicial or other authority to be invalid for any reason.

9 (4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner in
 10 ~~his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

11 (5) A document is filed when it is received by the commissioner. The commissioner shall keep a
 12 register of all applications for registration and registration statements ~~which~~ that are or have ever been
 13 effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ that
 14 have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public
 15 inspection. The information contained in or filed with any registration statement, application, or report may
 16 be made available to the public under ~~such~~ rules as the commissioner prescribes.

17 (6) Upon request and at ~~such a reasonable charges as he prescribes~~ charge, the commissioner shall
 18 furnish to any person photostatic or other copies, ~~(certified under his seal of office if requested,)~~ of any
 19 entry in the register or any document ~~which~~ that is a matter of public record. In any proceeding or
 20 prosecution under parts 1 through 3 of this chapter, any certified copy ~~so certified~~ is prima facie evidence
 21 of the contents of the entry or document certified.

22 (7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and
 23 exchange commission, the commodity futures trading commission, the securities investor protection
 24 corporation, any national securities exchange, or national securities association registered under the
 25 Securities Exchange Act of 1934, any national or international organization of securities officials or
 26 agencies, and any governmental agency, corporation, or body.

27 (8) Except as specifically provided in this title, an order or notice may be given to a person by
 28 personal delivery or by mail addressed to that person at the person's last recorded principal place of
 29 business on file at the commissioner's office. An order or notice that is mailed is considered to have been
 30 given at the time it is mailed."

1 **Section 4.** Section 30-10-110, MCA, is amended to read:

2 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
3 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
4 to buy is made and accepted in this state.

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

7 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
8 either party is then present in this state, when the offer either originates from this state or is directed by
9 the offeror to this state and received at the place to which it is directed or at any post office in this state
10 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
11 ~~received by the offeree in this state is not made in this state.~~

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

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

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

21 (i) not published in this state; or

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

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

25 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers
26 and investment adviser representatives are concerned, apply when any act instrumental in effecting
27 prohibited conduct is done in this state, whether or not either party is then present in this state."
28

29 **Section 5.** Section 30-10-201, MCA, is amended to read:

30 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**

1 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact
 2 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person
 3 is registered under parts 1 through 3 of this chapter.

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

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

9 (a) the person is ~~so~~ registered under parts 1 through 3 of this chapter;

10 ~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

11 ~~(c) the person does not have a place of business in the state and the person's only clients in this~~
 12 state are:

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

15 (ii) other investment advisers;

16 (iii) federal covered advisers;

17 ~~(iii)~~(iv) broker-dealers;

18 ~~(iv)~~(v) banks;

19 ~~(v)~~(vi) trust companies;

20 ~~(vi)~~(vii) savings and loan associations;

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

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

24 ~~(ix)~~(x) other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

25 ~~(c) the person does not have a place of business in this state and during any 12 consecutive~~
 26 ~~months does not direct business communications in this state in any manner to more than five present or~~
 27 ~~prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the~~
 28 ~~persons to whom the communications are directed are then present in this state~~ the preceding 12-month
 29 period the person has not had more than five clients who are residents of this state.

30 (4) Except for advisers whose only clients are clients listed in subsection (3)(b), it is unlawful for

1 a federal covered adviser to conduct advisory business in this state unless the federal covered adviser
 2 complies with the provisions of subsection (6)(b).

3 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
 4 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
 5 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
 6 3.

7 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
 8 investment adviser representative who maintains a place of business in this state unless the investment
 9 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
 10 3.

11 ~~(4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
 12 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
 13 ~~representative may apply for registration by filing an application in the form that the commissioner~~
 14 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
 15 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
 16 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
 17 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
 18 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
 19 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
 20 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
 21 ~~who may suffer loss by reason of a failure to comply.~~

22 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b),
 23 a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
 24 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
 25 securities and exchange commission that the commissioner requires by rule or order.

26 ~~(5)(7)~~ The application must contain whatever information the commissioner requires. A registration
 27 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may
 28 not be withdrawn before the commissioner approves or denies the registration, without the express written
 29 consent of the commissioner.

30 ~~(6)(8)~~ When the registration requirements are met, the commissioner shall make the registration

1 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment
 2 adviser representative may not be withdrawn or terminated without the express written consent of the
 3 commissioner.

4 ~~(7)(9)~~ ~~Except as provided in subsection (6), registration~~ Registration of a broker-dealer, salesperson,
 5 investment adviser, or investment adviser representative:

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

8 (b) may be renewed pursuant to subsection (11).

9 ~~(8)(10)~~ (a) The registration of a salesperson is not effective during any period when the salesperson
 10 is not associated with an issuer or a registered broker-dealer specified in the application. When a
 11 salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson
 12 and the issuer or broker-dealer shall promptly notify the commissioner.

13 ~~(9)(b)~~ The registration of an investment adviser representative is not effective during any period
 14 when the person is not associated with an investment adviser registered under this act and specified in the
 15 application. When an investment adviser representative begins or terminates a connection with an
 16 investment adviser, the investment adviser shall promptly notify the commissioner. When an investment
 17 adviser representative begins or terminates a connection with a federal covered adviser, the investment
 18 adviser representative shall promptly notify the commissioner.

19 ~~(10)(11)~~ Registration of a broker-dealer, salesperson, investment adviser, or investment adviser
 20 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration
 21 of the registration or notice filing, an application containing information as the commissioner may require
 22 to indicate any material change in the information contained in the original application or any renewal
 23 application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser~~
 24 ~~representative filed by the applicant~~ or notice filing, and payment of the prescribed fee prescribed by
 25 30-10-209, and, in the case of a A broker-dealer who is not a member of NASD, inc., by filing is required
 26 to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days
 27 of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange
 28 Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a
 29 successor, to become effective upon approval of the commissioner.

30 ~~(11)(12)~~ (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case

1 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
 2 adviser, every ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and
 3 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
 4 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3 years~~
 5 unless the period the commissioner prescribes ~~otherwise for particular types of records~~ by rule or order.
 6 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
 7 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
 8 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
 9 the protection of investors.

10 (b) The commissioner may require investment advisers to furnish or disseminate certain information
 11 as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

12 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
 13 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
 14 correcting amendment.

15 ~~(12)~~(13) The commissioner may by order deny, suspend, or revoke registration of any
 16 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
 17 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
 18 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
 19 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
 20 adviser:

21 (a) has filed an application for registration under this section that, as of its effective date or as of
 22 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
 23 or contained any statement that was, in the light of the circumstances under which it was made, false or
 24 misleading with respect to any material fact;

25 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
 26 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor
 27 law;

28 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
 29 business or any felony;

30 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging

1 in or continuing any conduct or practice involving any aspect of the securities business;

2 (e) is the subject of an order of the commissioner denying, suspending, or revoking registration as
3 a broker-dealer, salesperson, investment adviser, or investment adviser representative;

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

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

10 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
11 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
12 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
13 as to the broker-dealer or investment adviser;

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

16 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
17 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
18 corrected; or

19 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
20 representatives or employees to assure their compliance with this act.

21 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
22 of a fact or transaction known to the commissioner when registration became effective unless the
23 proceeding is instituted within 30 days after the date on which the registration became effective.

24 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
25 determination of any proceeding under this section.

26 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) ~~of this section~~, the commissioner
27 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
28 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
29 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
30 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not

1 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
2 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
3 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
5 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
6 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
7 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
8 by order cancel the registration or application.

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

21 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
22 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
23 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
24 representative if the sole proprietor meets the examination requirements established by the commissioner
25 by rule.

26 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general
27 securities principal's examination is not required to also pass the uniform investment adviser law
28 examination. The commissioner shall by rule provide for a form that a person who passes the general
29 securities principal's examination shall file with the commissioner as a verification of having passed the
30 examination unless the commissioner can verify electronically that the person has passed the exam."

1 **Section 6.** Section 30-10-202, MCA, is amended to read:

2 "**30-10-202. Registration of securities.** It is unlawful for any person to offer or sell any security
3 in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under
4 30-10-105, unless;

5 (1) ~~such~~ the security is registered by notification, coordination, or qualification under parts 1
6 through 3 of this chapter; or

7 (2) for a federal covered security, the security has been filed with the commissioner pursuant to
8 [section 10] and the fee prescribed in 30-10-209 has been paid."

9

10 **Section 7.** Section 30-10-207, MCA, is amended to read:

11 "**30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner
12 may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any
13 registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

14 (a) the registration statement, as of its effective date or as of any earlier date in the case of an
15 order denying effectiveness, is incomplete in any material respect or contains any statement ~~which~~ that
16 was, in the light of the circumstances under which it was made, false or misleading with respect to any
17 material fact;

18 (b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully
19 imposed under parts 1 through 3 of this chapter has been willfully violated, ~~in connection with the offering,~~
20 by:

21 (i) the person filing the registration statement;

22 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status
23 or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer,
24 but only if the person filing the registration statement is directly or indirectly controlled by or acting for the
25 issuer; or

26 (iii) any underwriter;

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

30 (i) the commissioner may not institute a proceeding against an effective registration statement

1 under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

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

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

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

8 (f) when a security is sought to be registered by notification, it is not eligible for ~~such~~
9 by notification;

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

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

15 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'
16 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
17 amounts or kinds of options.

18 (2) The commissioner may not enter a suspension or revocation order against an effective
19 registration statement on the basis of a fact or transaction known to ~~him~~ the commissioner when the
20 registration statement became effective.

21 (3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly
22 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
23 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
24 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ a hearing
25 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
26 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
27 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."
28

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

30 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1

1 through 3 of this chapter:

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

7 (b) Each succeeding year, a registration of securities or a notice filing of a federal covered security
8 may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and
9 payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering
10 price of the securities that are to be offered in this state during that year, ~~even though the maximum fee~~
11 ~~was paid the preceding year~~. The ~~additional registration~~ renewal fee may not be less than \$200 or more
12 than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase
13 the amount of securities to be offered.

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

20 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated
21 as a separate issuer of securities. The issuer shall pay a portfolio registration fee to be calculated as
22 provided in subsections (1)(a) through (1)(c). The portfolio registration fee collected by the commissioner
23 must be deposited in the state special revenue account provided for in 30-10-115.

24 (2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original
25 registration and \$200 for each annual renewal.

26 (b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original
27 registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson
28 who is dually registered as an investment adviser representative with a broker-dealer dually registered as
29 an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

30 (c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each

1 annual renewal.

2 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
3 cost to the department.

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

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

9 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
10 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
11 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
12 general fund."
13

14 **Section 9.** Section 30-10-303, MCA, is amended to read:

15 "**30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the (1) The~~
16 fact that an application for registration under 30-10-201~~(4)~~(6) or a registration statement under 30-10-203,
17 30-10-204, or 30-10-205 has been filed ~~nor~~ or the fact that a person or security is effectively registered
18 ~~constitutes~~ does not constitute a finding by the commissioner that any document filed under parts 1
19 through 3 of this chapter is true, complete, and not misleading.

20 (2) Neither any such The fact that an application for registration has been filed or a person or
21 security effectively registered as provided in subsection (1) or ~~nor~~ the fact that an exemption or exception
22 is available for a security or a transaction ~~means~~ does not mean that the commissioner has passed in any
23 way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or
24 transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client
25 any representation inconsistent with this section."
26

27 NEW SECTION. **Section 10. Federal covered securities.** (1) The commissioner may require an
28 issuer to file any or all of the following documents with respect to a federal covered security provided for
29 in section 18(b)(2) of the Securities Act of 1933:

30 (a) documents that are part of a current federal registration statement filed with the securities and

1 exchange commission or amendments to a current registration statement filed with the securities and
2 exchange commission;

3 (b) a consent to the service of process signed by the issuer and payment of the fee required in
4 30-10-209; and

5 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
6 state.

7 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
8 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
9 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
10 fee prescribed in 30-10-209.

11 (3) The commissioner may require the filing of any document filed with the securities and exchange
12 commission under the Securities Act of 1933, with respect to a federal covered security under section
13 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
14 in 30-10-209.

15 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
16 covered security if the commissioner finds that the order is in the public interest and there is a failure to
17 comply with any requirement of this section.

18 (5) The commissioner may waive any of the provisions of this section.

19

20 ~~NEW SECTION. Section 11. Exemption. The state of Montana is exempt from the provisions of~~
21 ~~the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(e) of that act.~~

22

23 NEW SECTION. Section 11. Codification instruction. (4) [Section 10] is intended to be codified
24 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
25 to [section 10].

26 (2) ~~[Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the~~
27 ~~provisions of Title 30, chapter 10, apply to [section 11].~~

28

29 NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3 -END-

1 HOUSE BILL NO. 287

2 INTRODUCED BY WISEMAN, R. JOHNSON, EWER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST
5 OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE
6 EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE
7 SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR
8 ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS
9 OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING
10 THE ACTIVITIES OF FEDERAL COVERED ADVISERS; ~~EXEMPTING MONTANA FROM THE PROVISIONS OF~~
11 ~~THE PHILANTHROPY PROTECTION ACT~~; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107,
12 30-10-110, 30-10-201, 30-10-202, 30-10-207, 30-10-209, AND 30-10-303, MCA."

13

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

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11 ~~THE PHILANTHROPY PROTECTION ACT~~; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107,
12 30-10-110, 30-10-201, 30-10-202, 30-10-206, 30-10-207, 30-10-209, 30-10-301, AND 30-10-303,
13 MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 30-10-103, MCA, is amended to read:

18 "**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context
19 requires otherwise, the following definitions apply:

20 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in
21 securities for the account of others or for the person's own account.

22 (b) The term does not include:

23 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or
24 (ii) a person who does not have a place of business in this state if the person effects transactions
25 in this state exclusively with or through the issuers of the securities involved in the transactions, other
26 broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies
27 as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial
28 institutions or institutional buyers, whether acting for themselves or as trustee.

29 (2) "Commissioner" means the securities commissioner of this state.

30 (3) (a) "Commodity" means:

- 1 (i) any agricultural, grain, or livestock product or byproduct;
- 2 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether
3 characterized as precious, semiprecious, or otherwise;
- 4 (iii) any fuel, whether liquid, gaseous, or otherwise;
- 5 (iv) foreign currency; and
- 6 (v) all other goods, articles, products, or items of any kind.
- 7 (b) Commodity does not include:
- 8 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it
9 contains;
- 10 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
11 and offered and sold by the owner or lessee of the real property; or
- 12 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a
13 private sale by the owner.
- 14 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
15 effective date of this subsection.
- 16 (5) "Commodity futures trading commission" means the independent regulatory agency established
17 by congress to administer the Commodity Exchange Act.
- 18 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
19 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
20 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
21 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
22 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
23 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
24 the contrary, is presumed to be offered or sold for speculation or investment purposes.
- 25 (b) A commodity investment contract does not include a contract or agreement that requires, and
26 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
27 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
28 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
29 total amount of each commodity to be purchased under the contract or agreement when the commodity
30 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien

1 arises in connection with the purchase of each commodity or commodities.

2 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the
3 account, agreement, or contract the right but not the obligation to purchase or sell one or more
4 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
5 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

8 (8) (a) "Federal covered adviser" means a person who is:

9 (i)(A) registered under section 203 of the Investment Advisers Act of 1940; or

10 (ii)(B) excluded from the definition of "investment adviser" under section 202(a)(11) of the
11 Investment Advisers Act of 1940.

12 (b) A person acting as a federal investment adviser who has not promptly remedied the
13 nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the
14 nonpayment or underpayment from the commissioner is not a federal covered adviser.

15 (9) (a) "Federal covered security" means a security that is a covered security under section 18(b)
16 of the Securities Act of 1933 or rules promulgated by the commissioner.

17 (b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been
18 paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after
19 written notification from the commissioner has been received is not a federal covered security.

20 ~~(8)~~(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

21 ~~(9)~~(11) (a) "Investment adviser" means a person who, for compensation, engages in the business
22 of advising others, either directly or through publications or writings, as to the value of securities or as to
23 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
24 a regular business, issues or promulgates analyses or reports concerning securities.

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

26 (i) as an integral component of other financially related services, provides the investment advisory
27 services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

28 (ii) represents to any person that the financial planner or other person provides the investment
29 advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

30 (c) Investment adviser does not include:

- 1 (i) an investment adviser representative;
- 2 (ii) a bank, savings institution, trust company, or insurance company;
- 3 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
4 of the person's profession or who does not accept or receive, directly or indirectly, any commission,
5 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
6 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
7 securities for investment purposes;
- 8 (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(a)
9 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
10 compensation;
- 11 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or
12 financial publication or service, whether communicated in hard copy form or by electronic means or
13 otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation
14 of each client;
- 15 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
16 30-10-104(1);
- 17 (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(a)
18 is solely incidental to the practice of the person's profession; ~~or~~
- 19 (viii) a federal covered adviser; or
- 20 ~~(viii)~~ (ix) other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by
21 rule or order designate.
- 22 ~~(10)~~ (12) (a) "Investment adviser representative" means any partner of, officer of, director of, or
23 a person occupying a similar status or performing similar functions, or other individual, EXCEPT CLERICAL
24 OR MINISTERIAL PERSONNEL, employed by or associated with an investment adviser, ~~except clerical or~~
25 ~~ministerial personnel~~, who:
- 26 (i) makes any recommendation or otherwise renders advice regarding securities to clients;
- 27 (ii) manages accounts or portfolios of clients;
- 28 (iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or
- 29 (iv) supervises employees who perform any of the foregoing.
- 30 (b) Investment adviser representative does not include a salesperson registered pursuant to

1 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental
2 to the conduct of business as a salesperson and for which the salesperson does not receive special
3 compensation other than fees relating to the solicitation or offering of investment advisory services of a
4 registered investment adviser.

5 ~~(11)(13)~~ "Issuer" means any person who issues or proposes to issue any security, except that with
6 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
7 certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~for~~
8 persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer"
9 means the person or persons performing the acts and assuming the duties of depositor or manager pursuant
10 to the provisions of the trust or other agreement or instrument under which the security is issued.

11 ~~(12)(14)~~ "Nonissuer" means not directly or indirectly for the benefit of the issuer.

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

16 ~~(14)(16)~~ "Precious metal" means the following, in coin, bullion, or other form:

17 (a) silver;

18 (b) gold;

19 (c) platinum;

20 (d) palladium;

21 (e) copper; and

22 (f) other items as the commissioner may by rule or order specify.

23 ~~(15)(17)~~ "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

24 ~~(16)(18)~~ (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a
25 security or interest in a security for value.

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

28 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
29 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
30 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or

1 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
 2 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert
 3 into another security of the same or another issuer, is considered to include an offer of the other security.

4 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents a
 5 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
 6 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
 7 Salesperson does not include an individual who represents;

8 (a) an issuer in:

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

10 ~~(b)(ii)~~ effecting transactions exempted by 30-10-105, except when registration as a salesperson,
 11 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

12 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
 13 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;
 14 or

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

17 or

18 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
 19 of the Securities Exchange Act of 1934.

20 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
 21 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
 22 mean the federal statutes of those names ~~as amended before or after July 1, 1961.~~

23 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
 24 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
 25 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription;
 26 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
 27 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
 28 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
 29 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
 30 any interest in a security or based on the value of a security, or any certificate of interest or participation

1 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
2 purchase any of the foregoing.

3 (b) Security does not include an insurance or endowment policy or annuity contract under which
4 an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life
5 or some other specified period.

6 ~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the
7 District of Columbia and Puerto Rico.

8 ~~(21)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms
9 "sale", "sell", and "offer".

10

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

12 **"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of
13 the following securities:

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

21 (2) any security issued or guaranteed by Canada, ~~any a~~ a Canadian province, ~~any a~~ a political
22 subdivision of ~~any such a~~ a province, or ~~any an~~ an agency or corporate or other instrumentality of one or more
23 of the foregoing or any other foreign government with which the United States currently maintains
24 diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

25 (3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any a~~ a bank
26 organized under the laws of the United States or ~~any a~~ a bank, savings institution, or trust company
27 organized and supervised under the laws of any state;

28 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any a~~ a
29 federal savings and loan association or ~~any a~~ a building and loan or similar association organized under the
30 laws of any state and authorized to do business in this state;

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

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

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

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

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

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

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

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

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

21 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
22 7 years, ~~for~~ during the issuer's existence if that period is less than 7 years, in the payment of:

23 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
24 borrowed money; or

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

26 (d) the issuer has had consolidated net income, ~~before extraordinary items and the cumulative~~
27 ~~effect of accounting changes,~~ of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
28 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but
29 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
30 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year",

1 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
2 available, provided that ~~such~~ the statements cover a fiscal period ended not more than 15 months from the
3 commencement of the offering.

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

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

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

20 (9) any commercial paper ~~which~~ that arises out of a current transaction or the proceeds of which
21 have been or are to be used for the current transaction and ~~which~~ that evidences an obligation to pay cash
22 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such~~ the paper
23 which is likewise limited or any guarantee of ~~such~~ the paper or of any ~~such~~ renewal, when ~~such~~ the
24 commercial paper is sold to banks or insurance companies;

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

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

30 (12) any security listed or approved for listing upon notice of issuance on the New York stock

1 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
 2 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any
 3 other stock exchange registered with the federal securities and exchange commission and approved by the
 4 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
 5 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
 6 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
 7 otherwise condition the terms under which any security may be exempt under this subsection.

8 (13) any national market system security listed or approved for listing upon notice of issuance on
 9 the national association of securities dealers automated quotation system or any other national quotation
 10 system approved by the commissioner; any other security of the same issuer that is of senior or
 11 substantially equal rank; any security called for by subscription rights or warrants so listed or approved;
 12 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
 13 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
 14 may be exempt under this subsection.

15 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
 16 by any insurer organized and authorized to transact business under the laws of any state;

17 (15) any security for which an offer or sale is not directed to or received by a person in this state,
 18 and the issuer does not maintain a place of business in the state."

19

20 **Section 3.** Section 30-10-107, MCA, is amended to read:

21 "**30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
 22 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
 23 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
 24 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
 25 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
 26 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
 27 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
 28 cooperate with the securities administrators of the other states and the securities and exchange commission
 29 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
 30 in the form and content of registration statements, applications, and reports wherever practicable.

1 (2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to
 2 use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~
 3 not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes~~ do not
 4 authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~
 5 information or the fact that any investigation is being made, except among themselves or when necessary
 6 or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

7 (3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~
 8 do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the
 9 commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined
 10 by judicial or other authority to be invalid for any reason.

11 (4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner ~~in~~
 12 ~~his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

13 (5) A document is filed when it is received by the commissioner. The commissioner shall keep a
 14 register of all applications for registration and registration statements ~~which~~ that are or have ever been
 15 effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ that
 16 have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public
 17 inspection. The information contained in or filed with any registration statement, application, or report may
 18 be made available to the public under ~~such~~ rules ~~as~~ the commissioner prescribes.

19 (6) Upon request and at ~~such~~ a reasonable ~~charges as he prescribes~~ charge, the commissioner shall
 20 furnish to any person photostatic or other copies, ~~{certified under his seal of office if requested,}~~ of any
 21 entry in the register or any document ~~which~~ that is a matter of public record. In any proceeding or
 22 prosecution under parts 1 through 3 of this chapter, any certified copy ~~so certified~~ is prima facie evidence
 23 of the contents of the entry or document certified.

24 (7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and
 25 exchange commission, the commodity futures trading commission, the securities investor protection
 26 corporation, any national securities exchange, or national securities association registered under the
 27 Securities Exchange Act of 1934, any national or international organization of securities officials or
 28 agencies, and any governmental agency, corporation, or body.

29 (8) Except as specifically provided in this title, an order or notice may be given to a person by
 30 personal delivery or by mail addressed to that person at the person's last recorded principal place of

1 business on file at the commissioner's office. An order or notice that is mailed is considered to have been
 2 given at the time it is mailed."

3

4 **Section 4.** Section 30-10-110, MCA, is amended to read:

5 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
 6 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
 7 to buy is made and accepted in this state.

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

10 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
 11 either party is then present in this state, when the offer either originates from this state or is directed by
 12 the offeror to this state and received at the place to which it is directed or at any post office in this state
 13 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
 14 ~~received by the offeree in this state is not made in this state.~~

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

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

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

24 (i) not published in this state; or

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

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

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

1 **Section 5.** Section 30-10-201, MCA, is amended to read:

2 "**30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**
3 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact
4 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person
5 is registered under parts 1 through 3 of this chapter.

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

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

11 (a) the person is ~~ee~~ registered under parts 1 through 3 of this chapter;

12 ~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

13 ~~(c)~~ (b) the person does not have a place of business in the state and the person's only clients in this
14 state are:

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

17 (ii) other investment advisers;

18 (iii) federal covered advisers;

19 ~~(iii)~~ (iv) broker-dealers;

20 ~~(iv)~~ (v) banks;

21 ~~(v)~~ (vi) trust companies;

22 ~~(vi)~~ (vii) savings and loan associations;

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

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

26 ~~(ix)~~ (x) other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

27 ~~(d)~~ (c) the person does not have a place of business in this state and during ~~any 12 consecutive~~
28 ~~months does not direct business communications in this state in any manner to more than five present or~~
29 ~~prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the~~
30 ~~persons to whom the communications are directed are then present in this state~~ the preceding 12-month

1 period the person has not had more than five clients who are residents of this state, OTHER THAN THOSE
2 CLIENTS SPECIFIED IN SUBSECTION (3)(B).

3 (4) Except for FEDERAL COVERED advisers whose only clients are clients listed in subsection
4 (3)(b), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the
5 federal covered adviser complies with the provisions of subsection (6)(b).

6 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
7 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
8 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
9 3.

10 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
11 investment adviser representative who maintains a place of business in this state unless the investment
12 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
13 3.

14 ~~(4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
15 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
16 ~~representative may apply for registration by filing an application in the form that the commissioner~~
17 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
18 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
19 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
20 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
21 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
22 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
23 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
24 ~~who may suffer loss by reason of a failure to comply.~~

25 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) OR
26 (3)(C), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
27 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
28 securities and exchange commission that the commissioner requires by rule or order.

29 ~~(5)(7)~~ The application must contain whatever information the commissioner requires. A registration
30 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may

1 not be withdrawn before the commissioner approves or denies the registration, without the express written
2 consent of the commissioner.

3 ~~(6)(8)~~ When the registration requirements are met, the commissioner shall make the registration
4 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment
5 adviser representative may not be withdrawn or terminated without the express written consent of the
6 commissioner.

7 ~~(7)(9)~~ ~~Except as provided in subsection (6), registration~~ Registration of a broker-dealer, salesperson,
8 investment adviser, or investment adviser representative:

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

11 (b) may be renewed pursuant to subsection (11).

12 ~~(8)(10)~~ (a) The registration of a salesperson is not effective during any period when the salesperson
13 is not associated with an issuer or a registered broker-dealer specified in the application. When a
14 salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson
15 and the issuer or broker-dealer shall promptly notify the commissioner.

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

22 ~~(10)(11)~~ Registration of a broker-dealer, salesperson, investment adviser, or investment adviser
23 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration
24 of the registration or notice filing, an application containing information as the commissioner may require
25 to indicate any material change in the information contained in the original application or any renewal
26 application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser~~
27 ~~representative filed by the applicant~~ or notice filing, and payment of the ~~prescribed~~ prescribed fee prescribed by
28 30-10-209, and, in the case of a A broker-dealer who is not a member of NASD, inc., by filing is required
29 to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days
30 of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange

1 Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a
2 successor, to become effective upon approval of the commissioner.

3 ~~(11)(12)~~ (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case
4 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
5 adviser, every ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and
6 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
7 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3 years~~
8 ~~unless the period the commissioner prescribes otherwise for particular types of records~~ by rule or order.
9 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
10 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
11 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
12 the protection of investors.

13 (b) The commissioner may require investment advisers WHO ARE REGISTERED OR REQUIRED TO
14 BE REGISTERED to furnish or disseminate certain information as necessary or appropriate in the public
15 interest or for the protection of investors and advisory clients.

16 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
17 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
18 correcting amendment.

19 ~~(12)(13)~~ The commissioner may by order deny, suspend, or revoke registration of any
20 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
21 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
22 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
23 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
24 adviser:

25 (a) has filed an application for registration under this section that, as of its effective date or as of
26 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
27 or contained any statement that was, in the light of the circumstances under which it was made, false or
28 misleading with respect to any material fact;

29 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
30 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor

1 law;

2 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
3 business or any felony;

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

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

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

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

14 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
15 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
16 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
17 as to the broker-dealer or investment adviser;

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

20 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
21 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
22 corrected; or

23 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
24 representatives or employees to assure their compliance with this act.

25 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
26 of a fact or transaction known to the commissioner when registration became effective unless the
27 proceeding is instituted within 30 days after the date on which the registration became effective.

28 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
29 determination of any proceeding under this section.

30 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) of this section, the commissioner

1 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
2 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
3 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
4 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not
5 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
6 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
7 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

8 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
9 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
10 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
11 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
12 by order cancel the registration or application.

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

25 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
26 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
27 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
28 representative if the sole proprietor meets the examination requirements established by the commissioner
29 by rule.

30 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general

1 securities principal's examination is not required to also pass the uniform investment adviser law
 2 examination. The commissioner shall by rule provide for a form that a person who passes the general
 3 securities principal's examination shall file with the commissioner as a verification of having passed the
 4 examination unless the commissioner can verify electronically that the person has passed the exam."

5
 6 **Section 6.** Section 30-10-202, MCA, is amended to read:

7 **"30-10-202. Registration of securities.** It is unlawful for any person to offer or sell any security
 8 in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under
 9 30-10-105, unless;

10 (1) ~~each~~ the security is registered by notification, coordination, or qualification under parts 1
 11 through 3 of this chapter; or

12 (2) for a federal covered security, the security has been filed with the commissioner pursuant to
 13 [section 10] and the fee prescribed in 30-10-209 has been paid."

14
 15 **SECTION 7. SECTION 30-10-206, MCA, IS AMENDED TO READ:**

16 **"30-10-206. General provisions regarding registration of securities.** (1) A registration statement
 17 may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered
 18 broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information
 19 or document from any registration statement.

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

21 (i) that the following securities be deposited in escrow:

22 (A) any security issued within the past 3 years or to be issued to:

23 (I) a promoter for a consideration substantially different from the public offering price; or

24 (II) any person for a consideration other than cash; and

25 (B) any security issued or to be issued to a promoter while a corporation is still in a promotional
 26 or developmental stage; however, if shares were issued by a corporation while it was in a promotional or
 27 developmental stage and it no longer is in ~~each~~ that stage, then this condition does not apply; and

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

30 (b) The commissioner may determine the conditions of any escrow or impounding required

1 ~~hereunder~~, but he may not reject a depository solely because of location in another state.

2 (3) When securities are registered by notification, coordination, or qualification, they may be
3 offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered
4 broker-dealer. ~~Every~~ A registration ~~shall~~ must remain effective for a period of 1 year unless it is revoked by
5 the commissioner, terminated upon request of the registrant with the consent of the commissioner, or
6 renewed under 30-10-209(1)(b); ~~however~~ However, ~~said~~ the registration ~~shall~~ must be automatically
7 suspended upon a stop order or suspension proceedings being instituted by the securities and exchange
8 commission relative to ~~said~~ the securities and ~~shall~~ must continue to be suspended so long as ~~such~~ the
9 proceedings are pending and until the registration or filing with the securities and exchange commission
10 is effective. All outstanding securities of the same class as a currently registered security are considered
11 to be registered for the purpose of any nonissuer transaction. A registration statement which has become
12 effective may not be withdrawn for 1 year from its effective date if any securities of the same class are
13 outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells
14 registered securities must be registered pursuant to 30-10-201.

15 (4) The commissioner may require the person who filed the registration statement to file reports
16 to keep reasonably current the information contained in the registration statement and to disclose the
17 progress of the offering with respect to registered securities ~~which~~; that

18 ~~(a) are issued by a face amount certificate company or a redeemable security issued by an~~
19 ~~open end management company or unit investment trust as those terms are defined in the Investment~~
20 ~~Company Act of 1940; or~~

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

22 (5) ~~No~~ A securities registration statement may not be withdrawn, whether or not ~~such~~ the
23 statement has become effective, without the express written consent of the commissioner."
24

25 **Section 8.** Section 30-10-207, MCA, is amended to read:

26 "**30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner
27 may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any
28 registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

29 (a) the registration statement, as of its effective date or as of any earlier date in the case of an
30 order denying effectiveness, is incomplete in any material respect or contains any statement ~~which~~ that

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

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

6 (i) the person filing the registration statement;

7 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status
8 or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer,
9 but only if the person filing the registration statement is directly or indirectly controlled by or acting for the
10 issuer; or

11 (iii) any underwriter;

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

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

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

20 (d) the issuer's enterprise or method of business includes or would include activities ~~which~~ that
21 are illegal where performed;

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

23 (f) when a security is sought to be registered by notification, it is not eligible for ~~such~~
24 by notification;

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

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

30 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'

1 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
2 amounts or kinds of options.

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

6 (3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly
7 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
8 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
9 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ a hearing
10 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
11 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
12 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."
13

14 **Section 9.** Section 30-10-209, MCA, is amended to read:

15 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1
16 through 3 of this chapter:

17 (1) (a) For the registration of securities by notification, coordination, or qualification, or for notice
18 filing of a federal covered security, there must be paid to the commissioner for the ~~first~~ initial year of
19 registration or notice filing a registration fee of \$200 for the first \$100,000 of initial issue or portion ~~thereof~~
20 of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000,
21 with a maximum fee of \$1,000.

22 (b) Each succeeding year, a registration of securities or a notice filing of a federal covered security
23 may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and
24 payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering
25 price of the securities that are to be offered in this state during that year, ~~even though the maximum fee~~
26 ~~was paid the preceding year.~~ The ~~additional registration~~ renewal fee may not be less than \$200 or more
27 than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase
28 the amount of securities to be offered.

29 (c) If a registrant OR ISSUER OF FEDERAL COVERED SECURITIES sells securities in excess of the
30 aggregate amount registered for sale in this state, OR FOR WHICH A NOTICE FILING HAS BEEN

1 SUBMITTED, the registrant OR ISSUER may file an amendment to the registration statement OR NOTICE
2 FILING to include the excess sales. If the registrant OR ISSUER OF A FEDERAL COVERED SECURITY fails
3 to file an amendment before the expiration date of the registration order OR NOTICE, the registrant OR
4 ISSUER shall pay a filing fee for the excess sales of three times the amount calculated in the manner
5 specified in subsection (1)(b). Registration OR NOTICE of the excess securities is effective retroactively to
6 the date of the existing registration OR NOTICE.

7 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated
8 as a separate issuer of securities. The issuer shall pay a portfolio ~~registration~~ NOTICE FILING fee to be
9 calculated as provided in subsections (1)(a) through (1)(c). The portfolio ~~registration~~ NOTICE FILING fee
10 collected by the commissioner must be deposited in the state special revenue account provided for in
11 30-10-115.

12 (2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original
13 registration and \$200 for each annual renewal.

14 (b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original
15 registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson
16 who is dually registered as an investment adviser representative with a broker-dealer dually registered as
17 an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

18 (c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each
19 annual renewal.

20 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
21 cost to the department.

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

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

27 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
28 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
29 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
30 general fund."

1 **SECTION 10. SECTION 30-10-301, MCA, IS AMENDED TO READ:**

2 **"30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in
3 connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state,
4 to:

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

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

9 (c) engage in any act, practice, or course of business ~~which~~ that operates or would operate as a
10 fraud or deceit upon any person.

11 (2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from
12 another person for advising the other person as to the value of securities or their purchase or sale, whether
13 through the issuance of analysis or reports or otherwise:

14 (i) to employ any device, scheme, or artifice to defraud the other person;

15 (ii) to engage in any act, practice, or course of business ~~which~~ that operates or would operate as
16 a fraud or deceit upon the other person; or

17 (iii) without disclosing to the client in writing before the completion of the transaction the capacity
18 in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

19 (A) acting as principal for ~~his~~ the person's own account, to knowingly sell any security to or
20 purchase any security from a client; or

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

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

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

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

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

30 (4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment

1 adviser who is registered or required to be registered to enter into, extend, or renew any investment
2 advisory contract unless it provides in writing that:

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

5 (b) ~~an~~ an assignment of the contract may not be made by the investment adviser without the
6 consent of the other party to the contract; and

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

9 (5) Subsection (4)(a) does not prohibit an investment advisory contract ~~which~~ that provides for
10 compensation based upon the total value of a fund averaged over a definite period or as of definite dates
11 or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect
12 transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of
13 the assignor's outstanding voting securities by a security holder of the assignor; but if the investment
14 adviser is a partnership, ~~an~~ an assignment of an investment advisory contract is not considered to result
15 from the death or withdrawal of a minority of the members of the investment adviser having only a minority
16 interest in the business of the investment adviser or from the admission to the investment adviser of one
17 or more members who, after admission, will be only a minority of the members and will have only a
18 minority interest in the business.

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

21 (a) the commissioner by rule prohibits ~~such~~ custody; or

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

24

25 **Section 11.** Section 30-10-303, MCA, is amended to read:

26 **"30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the (1) The~~
27 fact that an application for registration under 30-10-201(4)(6), A NOTICE FILING UNDER [SECTION 12],
28 or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed ~~nor~~ or the fact that
29 a person or security is effectively registered OR A COMPLETE NOTICE FILING HAS BEEN MADE constitutes
30 does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this

1 chapter is true, complete, and not misleading.

2 ~~(2) Neither any such~~ The fact that an application for registration OR A NOTICE FILING has been filed
3 or a person or security IS effectively registered OR A COMPLETE NOTICE FILING HAS BEEN MADE as
4 provided in subsection (1) or ~~or~~ the fact that an exemption or exception is available for a security or a
5 transaction ~~means~~ does not mean that the commissioner has passed in any way upon the merits of,
6 qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful
7 to make or cause to be made to any prospective purchaser, customer, or client any representation
8 inconsistent with this section."
9

10 NEW SECTION. Section 12. Federal covered securities. (1) The commissioner may require an
11 issuer to file any or all of the following documents with respect to a federal covered security provided for
12 in section 18(b)(2) of the Securities Act of 1933:

13 (a) documents that are part of a current federal registration statement filed with the securities and
14 exchange commission or amendments to a current registration statement filed with the securities and
15 exchange commission;

16 (b) a consent to the service of process signed by the issuer and payment of the fee required in
17 30-10-209; and

18 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
19 state.

20 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
21 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
22 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
23 fee prescribed in 30-10-209.

24 (3) The commissioner may require the filing of any document filed with the securities and exchange
25 commission under the Securities Act of 1933, with respect to a federal covered security under section
26 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
27 in 30-10-209.

28 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
29 covered security if the commissioner finds that the order is in the public interest and there is a failure to
30 comply with any requirement of this section.

1 (5) The commissioner may waive any of the provisions of this section.

2
3 ~~NEW SECTION. Section 11. Exemption. The state of Montana is exempt from the provisions of~~
4 ~~the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(c) of that act.~~

5
6 NEW SECTION. Section 13. Codification instruction. ~~{1}~~ [Section ~~40~~ 12] is intended to be codified
7 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
8 to [section ~~40~~ 12].

9 ~~{2}~~ [Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the
10 provisions of Title 30, chapter 10, apply to [section 11].

11
12 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16 -END-

1 HOUSE BILL NO. 287

2 INTRODUCED BY WISEMAN, R. JOHNSON, EWER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST
5 OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE
6 EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE
7 SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR
8 ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS
9 OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING
10 THE ACTIVITIES OF FEDERAL COVERED ADVISERS; ~~EXEMPTING MONTANA FROM THE PROVISIONS OF~~
11 ~~THE PHILANTHROPY PROTECTION ACT~~; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107,
12 30-10-110, 30-10-201, 30-10-202, 30-10-206, 30-10-207, 30-10-209, 30-10-301, AND 30-10-303,
13 MCA."

14

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

16

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

18 "30-10-103. **Definitions.** When used in parts 1 through 3 of this chapter, unless the context
19 requires otherwise, the following definitions apply:

20 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in
21 securities for the account of others or for the person's own account.

22 (b) The term does not include:

23 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

24 (ii) a person who does not have a place of business in this state if the person effects transactions
25 in this state exclusively with or through the issuers of the securities involved in the transactions, other
26 broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies
27 as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial
28 institutions or institutional buyers, whether acting for themselves or as trustee.

29 (2) "Commissioner" means the securities commissioner of this state.

30 (3) (a) "Commodity" means:

- 1 (i) any agricultural, grain, or livestock product or byproduct;
- 2 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether
3 characterized as precious, semiprecious, or otherwise;
- 4 (iii) any fuel, whether liquid, gaseous, or otherwise;
- 5 (iv) foreign currency; and
- 6 (v) all other goods, articles, products, or items of any kind.
- 7 (b) Commodity does not include:
- 8 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it
9 contains;
- 10 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
11 and offered and sold by the owner or lessee of the real property; or
- 12 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a
13 private sale by the owner.
- 14 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
15 effective date of this subsection.
- 16 (5) "Commodity futures trading commission" means the independent regulatory agency established
17 by congress to administer the Commodity Exchange Act.
- 18 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
19 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
20 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
21 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
22 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
23 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
24 the contrary, is presumed to be offered or sold for speculation or investment purposes.
- 25 (b) A commodity investment contract does not include a contract or agreement that requires, and
26 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
27 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
28 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
29 total amount of each commodity to be purchased under the contract or agreement when the commodity
30 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien

1 arises in connection with the purchase of each commodity or commodities.

2 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the
3 account, agreement, or contract the right but not the obligation to purchase or sell one or more
4 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
5 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

8 (8) ~~(a)~~ "Federal covered adviser" means a person who is:

9 ~~(i)(A)~~ registered under section 203 of the Investment Advisers Act of 1940; or

10 ~~(i)(B)~~ excluded from the definition of "investment adviser" under section 202(a)(11) of the
11 Investment Advisers Act of 1940.

12 ~~(b) A person acting as a federal investment adviser who has not promptly remedied the~~
13 ~~nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the~~
14 ~~nonpayment or underpayment from the commissioner is not a federal covered adviser.~~

15 (9) ~~(a)~~ "Federal covered security" means a security that is a covered security under section 18(b)
16 of the Securities Act of 1933 or rules promulgated by the commissioner.

17 ~~(b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been~~
18 ~~paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after~~
19 ~~written notification from the commissioner has been received is not a federal covered security.~~

20 ~~(8)(10)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

21 ~~(9)(11)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business
22 of advising others, either directly or through publications or writings, as to the value of securities or as to
23 the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of
24 a regular business, issues or promulgates analyses or reports concerning securities.

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

26 (i) as an integral component of other financially related services, provides the investment advisory
27 services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

28 (ii) represents to any person that the financial planner or other person provides the investment
29 advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

30 (c) Investment adviser does not include:

- 1 (i) an investment adviser representative;
- 2 (ii) a bank, savings institution, trust company, or insurance company;
- 3 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
4 of the person's profession or who does not accept or receive, directly or indirectly, any commission,
5 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
6 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
7 securities for investment purposes;
- 8 (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(a)
9 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
10 compensation;
- 11 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or
12 financial publication or service, whether communicated in hard copy form or by electronic means or
13 otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation
14 of each client;
- 15 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
16 30-10-104(1);
- 17 (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(a)
18 is solely incidental to the practice of the person's profession; ~~or~~
- 19 (viii) a federal covered adviser; or
- 20 ~~(viii)(ix)~~ (ix) other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by
21 rule or order designate.
- 22 ~~(10)(12)~~ (12) (a) "Investment adviser representative" means any partner of, officer of, director of, or
23 a person occupying a similar status or performing similar functions, or other individual, EXCEPT CLERICAL
24 OR MINISTERIAL PERSONNEL, employed by or associated with an investment adviser, ~~except clerical or~~
25 ~~ministerial personnel~~, who:
- 26 (i) makes any recommendation or otherwise renders advice regarding securities to clients;
- 27 (ii) manages accounts or portfolios of clients;
- 28 (iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or
- 29 (iv) supervises employees who perform any of the foregoing.
- 30 (b) Investment adviser representative does not include a salesperson registered pursuant to

1 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental
2 to the conduct of business as a salesperson and for which the salesperson does not receive special
3 compensation other than fees relating to the solicitation or offering of investment advisory services of a
4 registered investment adviser.

5 ~~(11)~~(13) "Issuer" means any person who issues or proposes to issue any security, except that with
6 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
7 certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~for~~
8 persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer"
9 means the person or persons performing the acts and assuming the duties of depositor or manager pursuant
10 to the provisions of the trust or other agreement or instrument under which the security is issued.

11 ~~(12)~~(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

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

16 ~~(14)~~(16) "Precious metal" means the following, in coin, bullion, or other form:

17 (a) silver;

18 (b) gold;

19 (c) platinum;

20 (d) palladium;

21 (e) copper; and

22 (f) other items as the commissioner may by rule or order specify.

23 ~~(15)~~(17) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

24 ~~(16)~~(18) (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a
25 security or interest in a security for value.

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

28 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
29 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
30 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or

1 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
 2 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert
 3 into another security of the same or another issuer, is considered to include an offer of the other security.

4 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents a
 5 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
 6 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
 7 Salesperson does not include an individual who represents:

8 (a) an issuer in:

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

10 ~~(b)~~(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson,
 11 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

12 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
 13 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;

14 or

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

17 or

18 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
 19 of the Securities Exchange Act of 1934.

20 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
 21 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
 22 mean the federal statutes of those names ~~as amended before or after July 1, 1961.~~

23 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
 24 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
 25 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription;
 26 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
 27 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
 28 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
 29 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
 30 any interest in a security or based on the value of a security, or any certificate of interest or participation

1 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
 2 purchase any of the foregoing.

3 (b) Security does not include an insurance or endowment policy or annuity contract under which
 4 an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life
 5 or some other specified period.

6 ~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the
 7 District of Columbia and Puerto Rico.

8 ~~(24)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms
 9 "sale", "sell", and "offer"."

10

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

12 **"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of
 13 the following securities:

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

21 (2) any security issued or guaranteed by Canada, ~~any a~~ Canadian province, ~~any a~~ political
 22 subdivision of ~~any such a~~ province, or ~~any an~~ agency or corporate or other instrumentality of one or more
 23 of the foregoing or any other foreign government with which the United States currently maintains
 24 diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

25 (3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any a~~ bank
 26 organized under the laws of the United States or ~~any a~~ bank, savings institution, or trust company
 27 organized and supervised under the laws of any state;

28 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any a~~
 29 federal savings and loan association or ~~any a~~ building and loan or similar association organized under the
 30 laws of any state and authorized to do business in this state;

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

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

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

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

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

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

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

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

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

21 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
22 7 years, ~~for~~ during the issuer's existence if that period is less than 7 years, in the payment of:

23 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
24 borrowed money; or

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

26 (d) the issuer has had consolidated net income, ~~before extraordinary items and the cumulative~~
27 ~~effect of accounting changes,~~ of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
28 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but
29 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
30 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year",

1 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
2 available, provided that ~~such the~~ statements cover a fiscal period ended not more than 15 months from the
3 commencement of the offering.

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

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

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

20 (9) any commercial paper ~~which that~~ arises out of a current transaction or the proceeds of which
21 have been or are to be used for the current transaction and ~~which that~~ evidences an obligation to pay cash
22 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such the~~ paper
23 which is likewise limited or any guarantee of ~~such the~~ paper or of any ~~such~~ renewal, when ~~such the~~
24 commercial paper is sold to banks or insurance companies;

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

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

30 (12) any security listed or approved for listing upon notice of issuance on the New York stock

1 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
 2 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any
 3 other stock exchange registered with the federal securities and exchange commission and approved by the
 4 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
 5 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
 6 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
 7 otherwise condition the terms under which any security may be exempt under this subsection.

8 (13) any national market system security listed or approved for listing upon notice of issuance on
 9 the national association of securities dealers automated quotation system or any other national quotation
 10 system approved by the commissioner; any other security of the same issuer that is of senior or
 11 substantially equal rank; any security called for by subscription rights or warrants so listed or approved;
 12 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
 13 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
 14 may be exempt under this subsection.

15 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
 16 by any insurer organized and authorized to transact business under the laws of any state;

17 (15) any security for which an offer or sale is not directed to or received by a person in this state,
 18 and the issuer does not maintain a place of business in the state."

19
 20 **Section 3.** Section 30-10-107, MCA, is amended to read:

21 "**30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
 22 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
 23 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
 24 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
 25 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
 26 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
 27 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
 28 cooperate with the securities administrators of the other states and the securities and exchange commission
 29 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
 30 in the form and content of registration statements, applications, and reports wherever practicable.

1 (2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to
2 use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~
3 not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes~~ do not
4 authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~
5 information or the fact that any investigation is being made, except among themselves or when necessary
6 or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

7 (3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~
8 do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the
9 commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined
10 by judicial or other authority to be invalid for any reason.

11 (4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner ~~in~~
12 ~~his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

13 (5) A document is filed when it is received by the commissioner. The commissioner shall keep a
14 register of all applications for registration and registration statements ~~which~~ that are or have ever been
15 effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ that
16 have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public
17 inspection. The information contained in or filed with any registration statement, application, or report may
18 be made available to the public under ~~such~~ rules ~~as~~ the commissioner prescribes.

19 (6) Upon request and at ~~such a~~ reasonable ~~charges as he prescribes~~ charge, the commissioner shall
20 furnish to any person photostatic or other copies, ~~(certified under his seal of office if requested,)~~ of any
21 entry in the register or any document ~~which~~ that is a matter of public record. In any proceeding or
22 prosecution under parts 1 through 3 of this chapter, any certified copy ~~is~~ is prima facie evidence
23 of the contents of the entry or document certified.

24 (7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and
25 exchange commission, the commodity futures trading commission, the securities investor protection
26 corporation, any national securities exchange, or national securities association registered under the
27 Securities Exchange Act of 1934, any national or international organization of securities officials or
28 agencies, and any governmental agency, corporation, or body.

29 (8) Except as specifically provided in this title, an order or notice may be given to a person by
30 personal delivery or by mail addressed to that person at the person's last recorded principal place of

1 business on file at the commissioner's office. An order or notice that is mailed is considered to have been
 2 given at the time it is mailed."

3
 4 **Section 4.** Section 30-10-110, MCA, is amended to read:

5 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
 6 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
 7 to buy is made and accepted in this state.

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

10 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
 11 either party is then present in this state, when the offer either originates from this state or is directed by
 12 the offeror to this state and received at the place to which it is directed or at any post office in this state
 13 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
 14 ~~received by the offeree in this state is not made in this state.~~

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

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

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

24 (i) not published in this state; or

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

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

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

1 **Section 5.** Section 30-10-201, MCA, is amended to read:

2 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**
3 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact
4 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person
5 is registered under parts 1 through 3 of this chapter.

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

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

11 (a) the person is ~~ee~~ registered under parts 1 through 3 of this chapter;

12 ~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

13 ~~(c)~~(b) the person does not have a place of business in the state and the person's only clients in this
14 state are:

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

17 (ii) other investment advisers;

18 (iii) federal covered advisers;

19 ~~(iii)~~(iv) broker-dealers;

20 ~~(iv)~~(v) banks;

21 ~~(v)~~(vi) trust companies;

22 ~~(vi)~~(vii) savings and loan associations;

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

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

26 ~~(ix)~~(x) other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

27 ~~(d)~~(c) the person does not have a place of business in this state and during ~~any 12 consecutive~~
28 ~~months does not direct business communications in this state in any manner to more than five present or~~
29 ~~prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the~~
30 ~~persons to whom the communications are directed are then present in this state~~ the preceding 12-month

1 period the person has not had more than five clients who are residents of this state, OTHER THAN THOSE
 2 CLIENTS SPECIFIED IN SUBSECTION (3)(B).

3 (4) Except for FEDERAL COVERED advisers whose only clients are clients listed in subsection
 4 (3)(b), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the
 5 federal covered adviser complies with the provisions of subsection (6)(b).

6 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
 7 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
 8 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
 9 3.

10 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
 11 investment adviser representative who maintains a place of business in this state unless the investment
 12 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
 13 3.

14 ~~4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
 15 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
 16 ~~representative may apply for registration by filing an application in the form that the commissioner~~
 17 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
 18 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
 19 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
 20 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
 21 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
 22 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
 23 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
 24 ~~who may suffer loss by reason of a failure to comply.~~

25 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) OR
 26 (3)(C), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
 27 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
 28 securities and exchange commission that the commissioner requires by rule or order.

29 ~~45)(7)~~ The application must contain whatever information the commissioner requires. A registration
 30 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may

1 not be withdrawn before the commissioner approves or denies the registration, without the express written
2 consent of the commissioner.

3 ~~(6)~~(8) When the registration requirements are met, the commissioner shall make the registration
4 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment
5 adviser representative may not be withdrawn or terminated without the express written consent of the
6 commissioner.

7 ~~(7)~~(9) ~~Except as provided in subsection (6), registration~~ Registration of a broker-dealer, salesperson,
8 investment adviser, or investment adviser representative:

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

11 (b) may be renewed pursuant to subsection (11).

12 ~~(8)~~(10) (a) The registration of a salesperson is not effective during any period when the salesperson
13 is not associated with an issuer or a registered broker-dealer specified in the application. When a
14 salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson
15 and the issuer or broker-dealer shall promptly notify the commissioner.

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

22 ~~(10)~~(11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser
23 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration
24 of the registration or notice filing, an application containing information as the commissioner may require
25 to indicate any material change in the information contained in the original application or any renewal
26 application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser~~
27 ~~representative filed by the applicant~~ or notice filing, and payment of the prescribed fee prescribed by
28 30-10-209, and, in the case of a A broker-dealer who is not a member of NASD, inc., by filing is required
29 to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days
30 of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange

1 Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a
 2 successor, to become effective upon approval of the commissioner.

3 ~~(11)(12)~~ (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case
 4 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
 5 adviser, every ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and
 6 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
 7 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3 years~~
 8 ~~unless the period~~ the commissioner prescribes ~~otherwise for particular types of records~~ by rule or order.

9 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
 10 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
 11 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
 12 the protection of investors.

13 (b) The commissioner may require investment advisers WHO ARE REGISTERED OR REQUIRED TO
 14 BE REGISTERED to furnish or disseminate certain information as necessary or appropriate in the public
 15 interest or for the protection of investors and advisory clients.

16 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
 17 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
 18 correcting amendment.

19 ~~(12)(13)~~ The commissioner may by order deny, suspend, or revoke registration of any
 20 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
 21 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
 22 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
 23 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
 24 adviser:

25 (a) has filed an application for registration under this section that, as of its effective date or as of
 26 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
 27 or contained any statement that was, in the light of the circumstances under which it was made, false or
 28 misleading with respect to any material fact;

29 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
 30 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor

1 law;

2 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
3 business or any felony;

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

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

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

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

14 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
15 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
16 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
17 as to the broker-dealer or investment adviser;

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

20 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
21 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
22 corrected; or

23 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
24 representatives or employees to assure their compliance with this act.

25 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
26 of a fact or transaction known to the commissioner when registration became effective unless the
27 proceeding is instituted within 30 days after the date on which the registration became effective.

28 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
29 determination of any proceeding under this section.

30 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) of this section, the commissioner

1 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
2 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
3 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
4 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not
5 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
6 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
7 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

8 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
9 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
10 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
11 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
12 by order cancel the registration or application.

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

25 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
26 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
27 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
28 representative if the sole proprietor meets the examination requirements established by the commissioner
29 by rule.

30 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general

1 securities principal's examination is not required to also pass the uniform investment adviser law
 2 examination. The commissioner shall by rule provide for a form that a person who passes the general
 3 securities principal's examination shall file with the commissioner as a verification of having passed the
 4 examination unless the commissioner can verify electronically that the person has passed the exam."

5

6 **Section 6.** Section 30-10-202, MCA, is amended to read:

7 **"30-10-202. Registration of securities.** It is unlawful for any person to offer or sell any security
 8 in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under
 9 30-10-105, unless:

10 (1) such the security is registered by notification, coordination, or qualification under parts 1
 11 through 3 of this chapter; or

12 (2) for a federal covered security, the security has been filed with the commissioner pursuant to
 13 [section 10] and the fee prescribed in 30-10-209 has been paid."

14

15 **SECTION 7. SECTION 30-10-206, MCA, IS AMENDED TO READ:**

16 **"30-10-206. General provisions regarding registration of securities.** (1) A registration statement
 17 may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered
 18 broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information
 19 or document from any registration statement.

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

21 (i) that the following securities be deposited in escrow:

22 (A) any security issued within the past 3 years or to be issued to:

23 (I) a promoter for a consideration substantially different from the public offering price; or

24 (II) any person for a consideration other than cash; and

25 (B) any security issued or to be issued to a promoter while a corporation is still in a promotional
 26 or developmental stage; however, if shares were issued by a corporation while it was in a promotional or
 27 developmental stage and it no longer is in ~~such~~ that stage, then this condition does not apply; and

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

30 (b) The commissioner may determine the conditions of any escrow or impounding required

1 hereunder, but he may not reject a depository solely because of location in another state.

2 (3) When securities are registered by notification, coordination, or qualification, they may be
 3 offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered
 4 broker-dealer. ~~Every~~ A registration ~~shall~~ must remain effective for a period of 1 year unless it is revoked by
 5 the commissioner, terminated upon request of the registrant with the consent of the commissioner, or
 6 renewed under 30-10-209(1)(b); ~~however~~ However, ~~said~~ the registration ~~shall~~ must be automatically
 7 suspended upon a stop order or suspension proceedings being instituted by the securities and exchange
 8 commission relative to ~~said~~ the securities and ~~shall~~ must continue to be suspended so long as ~~such~~ the
 9 proceedings are pending and until the registration or filing with the securities and exchange commission
 10 is effective. All outstanding securities of the same class as a currently registered security are considered
 11 to be registered for the purpose of any nonissuer transaction. A registration statement which has become
 12 effective may not be withdrawn for 1 year from its effective date if any securities of the same class are
 13 outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells
 14 registered securities must be registered pursuant to 30-10-201.

15 (4) The commissioner may require the person who filed the registration statement to file reports
 16 to keep reasonably current the information contained in the registration statement and to disclose the
 17 progress of the offering with respect to registered securities ~~which;~~ that

18 ~~(a) are issued by a face amount certificate company or a redeemable security issued by an~~
 19 ~~open end management company or unit investment trust as those terms are defined in the Investment~~
 20 ~~Company Act of 1940; or~~

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

22 (5) ~~No~~ A securities registration statement may not be withdrawn, whether or not ~~such~~ the
 23 statement has become effective, without the express written consent of the commissioner."
 24

25 **Section 8.** Section 30-10-207, MCA, is amended to read:

26 "**30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner
 27 may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any
 28 registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

29 (a) the registration statement, as of its effective date or as of any earlier date in the case of an
 30 order denying effectiveness, is incomplete in any material respect or contains any statement ~~which~~ that

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

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

6 (i) the person filing the registration statement;

7 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status
8 or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer,
9 but only if the person filing the registration statement is directly or indirectly controlled by or acting for the
10 issuer; or

11 (iii) any underwriter;

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

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

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

20 (d) the issuer's enterprise or method of business includes or would include activities ~~which~~ that
21 are illegal where performed;

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

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

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

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

30 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'

1 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
2 amounts or kinds of options.

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

6 (3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly
7 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
8 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
9 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ a hearing
10 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
11 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
12 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."
13

14 **Section 9.** Section 30-10-209, MCA, is amended to read:

15 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1
16 through 3 of this chapter:

17 (1) (a) For the registration of securities by notification, coordination, or qualification, or for notice
18 filing of a federal covered security, there must be paid to the commissioner for the ~~first~~ initial year of
19 registration or notice filing a ~~registration~~ fee of \$200 for the first \$100,000 of initial issue or portion ~~thereof~~
20 of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000,
21 with a maximum fee of \$1,000.

22 (b) Each succeeding year, a registration of securities or a notice filing of a federal covered security
23 may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and
24 payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering
25 price of the securities that are to be offered in this state during that year, ~~even though the maximum fee~~
26 ~~was paid the preceding year.~~ The ~~additional registration~~ renewal fee may not be less than \$200 or more
27 than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase
28 the amount of securities to be offered.

29 (c) If a registrant OR ISSUER OF FEDERAL COVERED SECURITIES sells securities in excess of the
30 aggregate amount registered for sale in this state, OR FOR WHICH A NOTICE FILING HAS BEEN

1 SUBMITTED, the registrant OR ISSUER may file an amendment to the registration statement OR NOTICE
2 FILING to include the excess sales. If the registrant OR ISSUER OF A FEDERAL COVERED SECURITY fails
3 to file an amendment before the expiration date of the registration order OR NOTICE, the registrant OR
4 ISSUER shall pay a filing fee for the excess sales of three times the amount calculated in the manner
5 specified in subsection (1)(b). Registration OR NOTICE of the excess securities is effective retroactively to
6 the date of the existing registration OR NOTICE.

7 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated
8 as a separate issuer of securities. The issuer shall pay a portfolio ~~registration~~ NOTICE FILING fee to be
9 calculated as provided in subsections (1)(a) through (1)(c). The portfolio ~~registration~~ NOTICE FILING fee
10 collected by the commissioner must be deposited in the state special revenue account provided for in
11 30-10-115.

12 (2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original
13 registration and \$200 for each annual renewal.

14 (b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original
15 registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson
16 who is dually registered as an investment adviser representative with a broker-dealer dually registered as
17 an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

18 (c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each
19 annual renewal.

20 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
21 cost to the department.

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

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

27 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
28 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
29 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
30 general fund."

1 **SECTION 10. SECTION 30-10-301, MCA, IS AMENDED TO READ:**

2 **"30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in
3 connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state,
4 to:

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

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

9 (c) engage in any act, practice, or course of business ~~which~~ that operates or would operate as a
10 fraud or deceit upon any person.

11 (2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from
12 another person for advising the other person as to the value of securities or their purchase or sale, whether
13 through the issuance of analysis or reports or otherwise:

14 (i) to employ any device, scheme, or artifice to defraud the other person;

15 (ii) to engage in any act, practice, or course of business ~~which~~ that operates or would operate as
16 a fraud or deceit upon the other person; or

17 (iii) without disclosing to the client in writing before the completion of the transaction the capacity
18 in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

19 (A) acting as principal for ~~his~~ the person's own account, to knowingly sell any security to or
20 purchase any security from a client; or

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

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

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

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

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

30 (4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment

1 adviser who is registered or required to be registered to enter into, extend, or renew any investment
2 advisory contract unless it provides in writing that:

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

5 (b) ~~an~~ an assignment of the contract may not be made by the investment adviser without the
6 consent of the other party to the contract; and

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

9 (5) Subsection (4)(a) does not prohibit an investment advisory contract ~~which~~ that provides for
10 compensation based upon the total value of a fund averaged over a definite period or as of definite dates
11 or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect
12 transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of
13 the assignor's outstanding voting securities by a security holder of the assignor; but if the investment
14 adviser is a partnership, ~~an~~ an assignment of an investment advisory contract is not considered to result
15 from the death or withdrawal of a minority of the members of the investment adviser having only a minority
16 interest in the business of the investment adviser or from the admission to the investment adviser of one
17 or more members who, after admission, will be only a minority of the members and will have only a
18 minority interest in the business.

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

21 (a) the commissioner by rule prohibits ~~such~~ custody; or

22 (b) in the absence of rule, the investment adviser fails to notify the commissioner that ~~he~~ the
23 investment adviser has or may have ~~such~~ custody."
24

25 **Section 11.** Section 30-10-303, MCA, is amended to read:

26 "**30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the (1) The~~
27 fact that an application for registration under 30-10-2014(6), A NOTICE FILING UNDER (SECTION 12),
28 or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed ~~nor~~ or the fact that
29 a person or security is effectively registered OR A COMPLETE NOTICE FILING HAS BEEN MADE ~~constitutes~~
30 does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this

1 chapter is true, complete, and not misleading.

2 ~~(2) Neither any such~~ The fact that an application for registration OR A NOTICE FILING has been filed
 3 or a person or security IS effectively registered OR A COMPLETE NOTICE FILING HAS BEEN MADE as
 4 provided in subsection (1) or ~~nor~~ the fact that an exemption or exception is available for a security or a
 5 transaction ~~means~~ does not mean that the commissioner has passed in any way upon the merits of,
 6 qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful
 7 to make or cause to be made to any prospective purchaser, customer, or client any representation
 8 inconsistent with this section."

9

10 NEW SECTION. Section 12. Federal covered securities. (1) The commissioner may require an
 11 issuer to file any or all of the following documents with respect to a federal covered security provided for
 12 in section 18(b)(2) of the Securities Act of 1933:

13 (a) documents that are part of a current federal registration statement filed with the securities and
 14 exchange commission or amendments to a current registration statement filed with the securities and
 15 exchange commission;

16 (b) a consent to the service of process signed by the issuer and payment of the fee required in
 17 30-10-209; and

18 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
 19 state.

20 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
 21 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
 22 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
 23 fee prescribed in 30-10-209.

24 (3) The commissioner may require the filing of any document filed with the securities and exchange
 25 commission under the Securities Act of 1933, with respect to a federal covered security under section
 26 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
 27 in 30-10-209.

28 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
 29 covered security if the commissioner finds that the order is in the public interest and there is a failure to
 30 comply with any requirement of this section.

1 (5) The commissioner may waive any of the provisions of this section.

2

3 ~~NEW SECTION. Section 11. Exemption. The state of Montana is exempt from the provisions of~~
4 ~~the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(c) of that act.~~

5

6 NEW SECTION. Section 13. Codification instruction. (1) [Section 40 12] is intended to be codified
7 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
8 to [section 40 12].

9 (2) [Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the
10 provisions of Title 30, chapter 10, apply to [section 11].

11

12 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16

-END-