

1 SENATE BILL NO. 125

2 INTRODUCED BY TESTER

3 BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SECURITIES LAWS FOR THE PURPOSE OF
6 PROMOTING CAPITAL FORMATION BY CREATING AN ADDITIONAL EXEMPT TRANSACTION FOR
7 MONTANA-BASED BUSINESSES; AND AMENDING SECTION 30-10-105, MCA."

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

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11 **Section 1.** Section 30-10-105, MCA, is amended to read:

12 **"30-10-105. Exempt transactions -- rulemaking.** Except as expressly provided in this section,
13 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

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

16 (2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to
17 30-10-201 if:

18 (i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any
19 warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system
20 operated by the national association of securities dealers, inc., or by any other quotation system approved by
21 the commissioner by rule; or

22 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a
23 ~~no~~ default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any
24 predecessors have been in existence for less than 3 years and there has not been a ~~no~~ default in the payment
25 of principal, interest, or dividends on the security.

26 (b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with
27 respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered
28 broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15
29 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not
30 ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If

1 a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested
2 persons, may modify or vacate the order or extend it until final determination. An order under this subsection
3 may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter
4 by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the
5 burden of proof that the person did not know and in the exercise of reasonable care could not have known of
6 the order.

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

11 (4) a transaction between the issuer or other person on whose behalf the offering is made and an
12 underwriter or between underwriters;

13 (5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy,
14 guardian, or conservator in the performance of official duties;

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

17 (7) an offer or sale to a bank, savings institution, trust company, insurance company, investment
18 company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial
19 institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary
20 capacity;

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

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

24 (ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
25 prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved
26 are registered with the United States securities and exchange commission under the federal Securities Act of
27 1933, as amended.

28 (b) ~~any a~~ transaction pursuant to an offer made in this state directed by the offeror to not more than 25
29 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

30 (i) the seller reasonably believes that all the buyers are purchasing for investment;

1 (ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
 2 prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved
 3 are registered with the United States securities and exchange commission under the federal Securities Act of
 4 1933, as amended; and

5 (iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers
 6 in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny
 7 an application.

8 (c) a transaction pursuant to an offer made in this state by an offeror that is using or has used USED IN
 9 CONJUNCTION WITH the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to
 10 use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection
 11 (8)(a), which the commissioner may allow if:

12 (i) the offeror has its corporate headquarters or principal place of business in this state;

13 (ii) the seller reasonably believes that all the buyers are purchasing for investment;

14 (iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
 15 prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved
 16 are registered with the United States securities and exchange commission under the federal Securities Act of
 17 1933, as amended; and

18 (iv) the offeror applies for and obtains the written approval of the commissioner prior to making any
 19 offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the
 20 application for approval. The commissioner may deny the application.

21 ~~(e)~~(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in
 22 this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either
 23 originates from this state or is directed by the offeror to this state and received at the place to which it is directed
 24 (or at any post office in this state in the case of a mailed offer).

25 (9) an offer or sale of a preorganization certificate or subscription if:

26 (a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
 27 prospective subscriber;

28 (b) the number of subscribers does not exceed 25; and

29 (c) a payment is not made by a subscriber;

30 (10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who

1 at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable
2 warrants exercisable within not more than 90 days of their issuance, if:

3 (a) a commission or other remuneration (other than a standby commission) is not paid or given directly
4 or indirectly for soliciting any security holder in this state; or

5 (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order
6 disallow either subsection (10)(a) or the notice specifying the terms of the offer;

7 (11) an offer, but not a sale, of a security for which registration statements have been filed under both
8 parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or
9 revocation order is not in effect and a public proceeding or examination looking toward an order is not pending
10 under either law;

11 (12) an offer, but not a sale, of a security for which a registration statement has been filed under parts
12 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

13 (13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer
14 of the security or not, if nothing of value is given by security holders for the distribution other than the surrender
15 of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

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

19 (15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of
20 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any
21 transactional exemptions adopted by rule.

22 (16) a transaction in the securities of a certified Montana capital company or a certified Montana small
23 business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents,
24 along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for
25 the filing.

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

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

30 (19) a transaction that:

- 1 (a) involves the purchase of one or more precious metals;
- 2 (b) requires, and under which the purchaser receives within 7 calendar days after payment in good
3 funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased.
4 For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period,
5 the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment
6 is delivered into the possession of a depository, other than the seller, that:
- 7 (i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under
8 or supervised pursuant to the laws of the United States or of this state;
- 9 (B) is a depository the warehouse receipts of which are recognized for delivery purposes for any
10 commodity on a contract market designated by the commodity futures trading commission; or
- 11 (C) is a storage facility licensed by the United States or any agency of the United States; and
- 12 (ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument
13 evidencing that the quantity of precious metals has been delivered to the depository and is being and will
14 continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:
- 15 (A) liens of the purchaser;
- 16 (B) tax liens;
- 17 (C) liens agreed to by the purchaser; or
- 18 (D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.
- 19 (c) requires the quantity of precious metals purchased and delivered into the possession of a depository,
20 as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery
21 period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at
22 all times after that delivery period;
- 23 (20) a transaction involving a commodity investment contract solely between persons engaged in
24 producing, processing, using commercially, or handling as merchants each commodity subject to the contract
25 or any byproduct of the commodity;
- 26 (21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership
27 plan qualified under section 401 of the Internal Revenue Code; or
- 28 (22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title
29 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title
30 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase

1 of the securities is necessary or incidental to establishing membership in the cooperative association;
2 (b) a cooperative organized under the laws of another state may not take advantage of the exemption
3 created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities,
4 the cooperative has furnished the commissioner with a general written description of the transaction and any
5 other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules
6 establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for
7 the purposes of this subsection (22)."

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