

SENATE BILL NO. 144

INTRODUCED BY G. BARKUS

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE SECURITIES LAWS; MODIFYING
6 THE INDIVIDUALS NOT INCLUDED IN THE DEFINITION OF "SALESPERSON"; PROVIDING FOR A CHARGE
7 OF 50 CENTS FOR EACH PAGE FOR OBTAINING CERTAIN COPIES FROM THE SECURITIES
8 COMMISSIONER; PROVIDING A \$50 FEE FOR AN ISSUER FILING A NAME CHANGE FOR A SERIES,
9 PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER; REQUIRING
10 THE FILING OF CERTAIN DOCUMENTS WITH RESPECT TO FEDERAL COVERED SECURITIES; AND
11 AMENDING SECTIONS 30-10-103, 30-10-107, 30-10-209, AND 30-10-211, MCA."

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

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15 **Section 1.** Section 30-10-103, MCA, is amended to read:
16 **"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires
17 otherwise, the following definitions apply:
18 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities
19 for the account of others or for the person's own account.
20 (b) The term does not include:
21 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or
22 (ii) a person who does not have a place of business in this state if the person effects transactions in this
23 state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers,
24 or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the
25 Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional
26 buyers, whether acting for themselves or as trustee.
27 (2) "Commissioner" means the securities commissioner of this state.
28 (3) (a) "Commodity" means:
29 (i) any agricultural, grain, or livestock product or byproduct;
30 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized

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

1 guaranty, decline guaranty, or otherwise.

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

4 (8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment
5 Advisers Act of 1940.

6 (b) The term does not include a person who would be exempt from the definition of investment adviser
7 pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

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

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

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

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

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

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

20 (c) Investment adviser does not include:

21 (i) an investment adviser representative;

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

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

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

30 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial

1 publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does
2 not consist of the rendering of advice on the basis of the specific investment situation of each client;

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

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

6 (viii) a federal covered adviser; or

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

9 (12) (a) "Investment adviser representative" means:

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

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

14 (B) manages accounts or portfolios of clients;

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

16 (D) supervises employees who perform any of the foregoing; and

17 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative
18 with a place of business in this state as those terms are defined by the securities and exchange commission
19 under the Investment Advisers Act of 1940.

20 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance
21 of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson
22 and for which the salesperson does not receive special compensation other than fees relating to the solicitation
23 or offering of investment advisory services of a registered investment adviser or of a federal covered adviser
24 who has made a notice filing under parts 1 through 3 of this chapter.

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

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

2 (15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy
3 a security or interest in a security for value.

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

8 (17) "Precious metal" means the following, in coin, bullion, or other form:

9 (a) silver;

10 (b) gold;

11 (c) platinum;

12 (d) palladium;

13 (e) copper; and

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

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

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

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

22 (a) an issuer in:

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

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

26 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities
27 Act of 1933 ~~for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933~~ if a commission
28 or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

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

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

3 (21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act
4 of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes
5 of those names.

6 (22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract;
7 commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any
8 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable
9 shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or
10 participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in
11 general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on
12 any security, certificate of deposit, or group or index of securities, including any interest in a security or based
13 on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for,
14 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

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

18 (23) "State" means any state, territory, or possession of the United States, as well as the District of
19 Columbia and Puerto Rico.

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

22

23 **Section 2.** Section 30-10-107, MCA, is amended to read:

24 **"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this chapter
25 must be under the general supervision and control of the state auditor, the ex officio securities commissioner.
26 The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out
27 the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner
28 finds that the action is necessary or appropriate in the public interest or for the protection of investors and
29 consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules
30 and forms, the commissioner may cooperate with the securities administrators of the other states and the

1 securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter
2 to achieve maximum uniformity in the form and content of registration statements, applications, and reports
3 whenever practicable.

4 (2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for
5 personal benefit any information filed with or obtained by the commissioner and not made public. The provisions
6 of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or
7 employees to disclose any information or the fact that an investigation is being made, except among themselves
8 or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

9 (3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to an act done or
10 omitted in good faith in conformity with a rule, form, or order of the commissioner, ~~notwithstanding that~~ even
11 though the rule or form may later be amended or rescinded or be determined by judicial or other authority to be
12 invalid for any reason.

13 (4) Every hearing in an administrative proceeding must be public.

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

20 (6) Upon request and at a ~~reasonable~~ charge of 50 cents for each page, the commissioner shall furnish
21 to any person photostatic or other copies, certified if requested, of any entry in the register or any document that
22 is a matter of public record. In a proceeding or prosecution under parts 1 through 3 of this chapter, a certified
23 copy is prima facie evidence 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 corporation,
26 the securities registration depository, any national securities exchange or national securities association
27 registered under the Securities Exchange Act of 1934, any national or international organization of securities
28 officials or 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 personal
30 delivery or by mail addressed to that person at the person's last-recorded principal place of business on file at

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

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4 **Section 3.** Section 30-10-209, MCA, is amended to read:

5 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1 through
6 3 of this chapter:

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

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

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

23 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as
24 a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in
25 subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited
26 in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of \$50 for each filing
27 made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company
28 or similar issuer.

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

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

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

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

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

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

14 (6) Except for portfolio notice filing fees established in this section, all fees, examination charges,
 15 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this
 16 chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."
 17

18 **Section 4.** Section 30-10-211, MCA, is amended to read:

19 **"30-10-211. Federal covered securities.** (1) ~~The commissioner may require an~~ An issuer is required
 20 to file ~~any or all of~~ the following documents with respect to a federal covered security provided for in section
 21 18(b)(2) of the Securities Act of 1933:

22 (a) documents that are part of a current federal registration statement filed with the securities and
 23 exchange commission or amendments to a current registration statement filed with the securities and exchange
 24 commission;

25 (b) a consent to the service of process signed by the issuer and payment of the fee required in
 26 30-10-209; and

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

28 (2) ~~The commissioner may require the~~ The issuer of a federal covered security under 18(b)(4)(D) of the
 29 Securities Act of 1933 is required to file within 15 days after the first sale in this state a notice on a form
 30 prescribed by the commissioner and a consent to service of process and ~~may require the issuer~~ is required to

1 pay the notice filing fee prescribed in 30-10-209.

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

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

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

9 - END -