

HOUSE BILL NO. 481

INTRODUCED BY C. HUNTER

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ONE ADDITIONAL REGISTRATION EXEMPTION TO SECURITIES LAWS; ALLOWING SECURITIES ISSUERS TO ENGAGE IN CERTAIN SECURITIES TRANSACTIONS IF CONDUCTED WITHIN THIS STATE; AND AMENDING SECTION 30-10-105, MCA."

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

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

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

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

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

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

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective

1 buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered
2 with the United States securities and exchange commission under the federal Securities Act of 1933, as
3 amended; and

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

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

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

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

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

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

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

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

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

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

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

29 (10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who
30 at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable

1 warrants exercisable within not more than 90 days of their issuance, if:

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

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

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

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

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

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

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

21 (16) the sale of a commodity investment contract traded on a commodities exchange recognized by the
22 commissioner at the time of sale;

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

25 (18) a transaction that:

26 (a) involves the purchase of one or more precious metals;

27 (b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds
28 of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the
29 purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the
30 quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is

1 delivered into the possession of a depository, other than the seller, that:

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

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

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

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

10 (A) liens of the purchaser;

11 (B) tax liens;

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

13 (D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

14 (c) requires the quantity of precious metals purchased and delivered into the possession of a depository,
15 as provided in subsection (18)(b), to be physically located within Montana at all times after the 7-day delivery
16 period provided in subsection (18)(b), and the precious metals are in fact physically located within Montana at
17 all times after that delivery period;

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

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

23 (21) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title
24 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title
25 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of
26 the securities is necessary or incidental to establishing membership in the cooperative association;

27 (b) a cooperative organized under the laws of another state may not take advantage of the exemption
28 created by this subsection (21) unless, not less than 10 days before the issuance or delivery of the securities,
29 the cooperative has furnished the commissioner with a general written description of the transaction and any
30 other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules

1 establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for
2 the purposes of this subsection (21).

3 (22) an offer or sale of securities in which:

4 (a) the offer or sale meets the following residency requirements:

5 (i) it is made in this state to residents of this state;

6 (ii) the issuer is a business entity formed under the laws of this state and registered with the Montana
7 secretary of state;

8 (iii) prior to the offer or sale, the issuer has documentary evidence to establish a reasonable basis to
9 believe the buyer is a resident of this state; and

10 (iv) the offer or sale meets the intrastate exemption requirements in section 3(a)(11) of the Securities Act
11 of 1933, 15 U.S.C. 77c(a)(11), and 17 CFR 230.147;

12 (b) the offer or sale meets the following payment requirements:

13 (i) cash and other consideration received by the issuer for all securities transactions does not exceed
14 \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months
15 before the first offer or sale made in reliance on this exemption;

16 (ii) the issuer does not accept more than \$10,000 from a buyer unless the buyer is an accredited investor
17 under Rule 501 SEC Regulation D, 17 CFR 230.501;

18 (iii) the issuer reasonably believes that all buyers are purchasing for investment and not for sale in
19 connection with a distribution of the security;

20 (iv) a commission or remuneration is not paid or given, directly or indirectly, for any person's participation
21 in the offer or sale of securities for the issuer unless the person is a registered broker-dealer or agent under this
22 chapter; and

23 (v) all funds received from buyers are deposited into a bank or depository institution authorized to do
24 business in this state and used in accordance with representations made to investors;

25 (c) the issuer, within 10 days of any solicitation or within 15 days after the first sale of the security
26 pursuant to this exemption, whichever occurs first, provides to the commissioner in a form prescribed by the
27 commissioner notice that:

28 (i) specifies that the issuer is conducting an offering in reliance upon this exemption;

29 (ii) identifies the issuer;

30 (iii) lists all persons involved in the offer and sale of securities on behalf of the issuer;

- 1 (iv) identifies the bank or other depository institution where investor funds will be deposited; and
2 (v) includes payment of a filing fee;
3 (d) the issuer does not constitute any of the following:
4 (i) before or after the offer or sale, an investment company as defined in section 3 of the Investment
5 Company Act of 1940, 15 U.S.C. 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the
6 Securities Exchange Act of 1934, 15 U.S.C. 78m and 78o(d);
7 (ii) before or after the offer or sale, an investment adviser as defined in this chapter or a person who
8 otherwise provides investment advice as a service or for a fee;
9 (iii) before the offer or sale, an individual who has been convicted within 10 years before the sale, or 5
10 years in the case of issuers, their predecessors, and affiliated issuers, of a felony or misdemeanor;
11 (iv) before or after the offer or sale, a person subject to a final order that bars the person from the
12 business of securities, insurance, or banking, issued by any of the following:
13 (A) a state or federal securities regulator or similar entity;
14 (B) a state or federal banking authority or similar entity;
15 (C) a state insurance commission or similar entity;
16 (e) the offer or sale:
17 (i) is used in conjunction with any other exemption under this chapter except the exemptions for
18 institutional investors under subsection (8) and for controlling persons of the issuer. Sales toward controlling
19 persons do not count toward the limitation in subsection (22)(b).
20 (ii) is not available if the issuer or any of its officers, controlling persons, or promoters is disqualified under
21 any part of this chapter;
22 (f) prior to the sale, the issuer informed all purchasers that the securities have not been registered under
23 this chapter and cannot be resold unless the securities are registered or qualify for an exemption from
24 registration;
25 (g) the offer or sale is not:
26 (i) an offering proposing to issue stock or other equity interest in a development stage company without
27 a specific business plan or purpose;
28 (ii) an offering in which the issuer has indicated that its business is to enlarge in a merger or acquisition
29 with an unidentified company or companies or other unidentified entities or persons; or
30 (iii) an offering without an allocation of proceeds to sufficiently identifiable properties or objectives."

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