

1 HOUSE BILL NO. 57

2 INTRODUCED BY M. FUNK

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ENHANCING PROTECTIONS FROM SECURITIES FRAUD FOR
6 THE ELDERLY OR PERSONS WITH DEVELOPMENTAL DISABILITIES; INCREASING ACCESS TO THE
7 SECURITIES ASSISTANCE RESTITUTION FUND FOR THE ELDERLY OR PERSONS WITH
8 DEVELOPMENTAL DISABILITIES; AMENDING SECTIONS 30-10-103, 30-10-305, 30-10-306, 30-10-1003, AND
9 30-10-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12

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

14 **"30-10-103. (Temporary) Definitions.** When used in parts 1 through 3 and 10 of this chapter, unless
15 the context requires otherwise, the following definitions apply:

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

18 (b) The term does not include:

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

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

25 (2) "Commissioner" means the securities commissioner provided for in 2-15-1901.

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

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

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

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

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

1 securities and exchange commission.

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

4 (b) A federal covered adviser is not an investment adviser as defined in subsection (11).

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

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

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

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

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

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

17 (c) Investment adviser does not include:

18 (i) an investment adviser representative;

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

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

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

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

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

- 1 (vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely
2 incidental to the practice of the person's profession;
- 3 (viii) a federal covered adviser; or
- 4 (ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order
5 designate.
- 6 (12) (a) "Investment adviser representative" means:
- 7 (i) any partner of, officer of, director of, or a person occupying a similar status or performing similar
8 functions, or other individual, except clerical or ministerial personnel, employed by or associated with an
9 investment adviser who:
- 10 (A) makes any recommendation or otherwise renders advice regarding securities to clients;
- 11 (B) manages accounts or portfolios of clients;
- 12 (C) solicits, offers, or negotiates for the sale or sells investment advisory services; or
- 13 (D) supervises employees who perform any of the foregoing; and
- 14 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative with
15 a place of business in this state as those terms are defined by the securities and exchange commission under
16 the Investment Advisers Act of 1940.
- 17 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance
18 of the services described in subsection (12)(a) of this section is solely incidental to the conduct of business as
19 a salesperson and for which the salesperson does not receive special compensation other than fees relating to
20 the solicitation or offering of investment advisory services of a registered investment adviser or of a federal
21 covered adviser who has made a notice filing under parts 1 through 3 and 10 of this chapter.
- 22 (13) "Issuer" means any person who issues or proposes to issue any security, except that with respect
23 to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of
24 interest or shares in an unincorporated investment trust not having a board of directors, or persons performing
25 similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or
26 persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the
27 trust or other agreement or instrument under which the security is issued.
- 28 (14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- 29 (15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy
30 a security or interest in a security for value.

1 (16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company,
2 a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a
3 government, or a political subdivision of a government.

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

5 (a) silver;

6 (b) gold;

7 (c) platinum;

8 (d) palladium;

9 (e) copper; and

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

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

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

14 (20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer
15 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer
16 or issuer is a salesperson only if the person otherwise comes within this definition.

17 (b) Salesperson does not include an individual who represents:

18 (i) an issuer in:

19 (A) effecting a transaction in a security exempted by 30-10-104(1) through (3) or (8) through (11);

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

22 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities
23 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a
24 prospective buyer; or

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

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

29 (21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment
30 Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

- 1 (22) (a) "Security" means any:
- 2 (i) note;
- 3 (ii) stock;
- 4 (iii) treasury stock;
- 5 (iv) bond;
- 6 (v) commodity investment contract;
- 7 (vi) commodity option;
- 8 (vii) debenture;
- 9 (viii) evidence of indebtedness;
- 10 (ix) certificate of interest or participation in any profit-sharing agreement;
- 11 (x) collateral-trust certificate;
- 12 (xi) preorganization certificate or subscription; transferable shares;
- 13 (xii) investment contract;
- 14 (xiii) voting-trust certificate;
- 15 (xiv) certificate of deposit for a security;
- 16 (xv) viatical settlement purchase agreement;
- 17 (xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of
- 18 production under a title or lease; or
- 19 (xvii) in general:
- 20 (A) interest or instrument commonly known as a security;
- 21 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
- 22 securities, including any interest in a security or based on the value of a security; or
- 23 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,
- 24 or warrant or right to subscribe to or purchase any of the items in this subsection (22)(a)(xvii).
- 25 (b) Security does not include an insurance or endowment policy or annuity contract under which an
- 26 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some
- 27 other specified period.
- 28 (23) "State" means any state, territory, or possession of the United States, as well as the District of
- 29 Columbia and Puerto Rico.
- 30 (24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",

1 and "offer".

2 (25) "Vulnerable person" means:

3 (a) a person who is at least 60 years of age;

4 (b) a person who suffers from mental impairment because of frailties or dependencies typically related
5 to advanced age, such as dementia or memory loss; or

6 (c) a person who has a developmental disability as defined in 53-20-102. (Terminates June 30,
7 2017--sec. 16, Ch. 58, L. 2011.)

8 **30-10-103. (Effective July 1, 2017) Definitions.** When used in parts 1 through 3 of this chapter, unless
9 the context requires otherwise, the following definitions apply:

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

12 (b) The term does not include:

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

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

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

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

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

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

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

25 (iv) foreign currency; and

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

27 (b) Commodity does not include:

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

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

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

3 (4) "Commodity Exchange Act" means the federal statute of that name.

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

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

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

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

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

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

28 (b) The term does not include a person who would be exempt from the definition of investment adviser
29 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).

30 (9) "Federal covered security" means a security that is a covered security under section 18(b) of the

1 Securities Act of 1933 or rules promulgated by the commissioner.

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

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

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

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

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

12 (c) Investment adviser does not include:

13 (i) an investment adviser representative;

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

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

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

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

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

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

28 (viii) a federal covered adviser; or

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

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

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

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

6 (B) manages accounts or portfolios of clients;

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

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

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

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

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

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

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

26 (16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company,
27 a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a
28 government, or a political subdivision of a government.

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

30 (a) silver;

- 1 (b) gold;
- 2 (c) platinum;
- 3 (d) palladium;
- 4 (e) copper; and
- 5 (f) other items as the commissioner may by rule or order specify.
- 6 (18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.
- 7 (19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or
8 interest in a security for value.
- 9 (20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer
10 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer
11 or issuer is a salesperson only if the person otherwise comes within this definition.
- 12 (b) Salesperson does not include an individual who represents:
- 13 (i) an issuer in:
- 14 (A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);
- 15 (B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant
16 to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;
- 17 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities
18 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a
19 prospective buyer; or
- 20 (D) effecting transactions with existing employees, partners, or directors of the issuer if no commission
21 or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
- 22 (ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the
23 Securities Exchange Act of 1934.
- 24 (21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment
25 Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.
- 26 (22) (a) "Security" means any:
- 27 (i) note;
- 28 (ii) stock;
- 29 (iii) treasury stock;
- 30 (iv) bond;

- 1 (v) commodity investment contract;
- 2 (vi) commodity option;
- 3 (vii) debenture;
- 4 (viii) evidence of indebtedness;
- 5 (ix) certificate of interest or participation in any profit-sharing agreement;
- 6 (x) collateral-trust certificate;
- 7 (xi) preorganization certificate or subscription; transferable shares;
- 8 (xii) investment contract;
- 9 (xiii) voting-trust certificate;
- 10 (xiv) certificate of deposit for a security;
- 11 (xv) viatical settlement purchase agreement;
- 12 (xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of
- 13 production under a title or lease; or
- 14 (xvii) in general:
- 15 (A) interest or instrument commonly known as a security;
- 16 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
- 17 securities, including any interest in a security or based on the value of a security; or
- 18 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,
- 19 or warrant or right to subscribe to or purchase any of the items in this subsection (22)(a)(xvii).
- 20 (b) Security does not include an insurance or endowment policy or annuity contract under which an
- 21 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some
- 22 other specified period.
- 23 (23) "State" means any state, territory, or possession of the United States, as well as the District of
- 24 Columbia and Puerto Rico.
- 25 (24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
- 26 and "offer".
- 27 (25) "Vulnerable person" means:
- 28 (a) a person who is at least 60 years of age;
- 29 (b) a person who suffers from mental impairment because of frailties or dependencies typically related
- 30 to advanced age, such as dementia or memory loss; or

1 (c) a person who has a developmental disability as defined in 53-20-102."

2

3 **Section 2.** Section 30-10-305, MCA, is amended to read:

4 **"30-10-305. (Temporary) Injunctions and other remedies -- limitations on actions.** (1) If it appears
5 to the commissioner that any person has engaged or is about to engage in any act or practice constituting a
6 violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the
7 commissioner may:

8 (a) issue an order directing the person to cease and desist from continuing the act or practice after
9 reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the
10 hearing that:

11 (i) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and
12 conclusions of law and a proposed order; or

13 (ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days
14 after receipt of the notice; or

15 (b) without the issuance of a cease and desist order, bring an action in any court of competent
16 jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any
17 rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order,
18 or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the
19 defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the
20 commissioner is entitled to reasonable attorney fees as fixed by the court.

21 (2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through
22 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or
23 decree entered before trial, is prima facie evidence against that person in an action brought against the person
24 under 30-10-307.

25 (3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this
26 section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or
27 practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued
28 under parts 1 through 3 of this chapter.

29 (b) If the commissioner finds that a person has willfully engaged in an act or practice identified in
30 subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not

1 to exceed \$20,000 per violation.

2 (c) ~~The A~~ fine under this subsection (3) is in addition to all other penalties imposed by the laws of this
3 state and must be collected by the commissioner in the name of the state of Montana and deposited in the
4 general fund.

5 (d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken
6 pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine
7 is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the
8 commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture
9 of the right to do business in this state under parts 1 through 3 of this chapter.

10 (4) (a) An administrative or civil action may not be maintained by the commissioner under this section
11 to enforce a liability based on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2
12 years after the violation occurs.

13 (b) An administrative or civil action may not be maintained by the commissioner under this section to
14 enforce a liability based on a violation of parts 1 through 3 of this chapter or any rule or order issued under this
15 chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by
16 the commissioner or the commissioner's staff of the facts constituting the violation.

17 (c) An action may not be maintained under this section to enforce any liability founded on a violation of
18 parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years
19 after the transaction on which the action is based.

20 (5) The commissioner in an administrative order requiring the payment of restitution or a court in a
21 judicial order or judgment requiring payment of restitution may include a provision requiring a person determined
22 to have violated any provision of parts 1 through 3 of this chapter to contribute an amount to the securities
23 restitution assistance fund created by 30-10-1004. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)

24 **30-10-305. (Effective July 1, 2017) Injunctions and other remedies -- limitations on actions.** (1) If
25 it appears to the commissioner that any person has engaged or is about to engage in any act or practice
26 constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter,
27 the commissioner may:

28 (a) issue an order directing the person to cease and desist from continuing the act or practice after
29 reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the
30 hearing that:

1 (i) remains in effect until 10 days after the hearing examiner issues proposed findings of fact and
2 conclusions of law and a proposed order; or

3 (ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days
4 after receipt of the notice; or

5 (b) without the issuance of a cease and desist order, bring an action in any court of competent
6 jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any
7 rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order,
8 or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the
9 defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the
10 commissioner is entitled to reasonable attorneys' fees as fixed by the court.

11 (2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through
12 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or
13 decree entered before trial, is prima facie evidence against that person in an action brought against the person
14 under 30-10-307.

15 (3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this
16 section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or
17 practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued
18 under parts 1 through 3 of this chapter.

19 (b) If the commissioner finds that a person has willfully engaged in any act or practice identified in
20 subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not
21 to exceed \$20,000 per violation.

22 (c) The A fine under this subsection (3) is in addition to all other penalties imposed by the laws of this
23 state and must be collected by the commissioner in the name of the state of Montana and deposited in the
24 general fund.

25 (d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken
26 pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine
27 is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the
28 commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture
29 of the right to do business in this state under parts 1 through 3 of this chapter.

30 (4) (a) An administrative or civil action may not be maintained by the commissioner under this section

1 to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within
2 2 years after the violation occurs.

3 (b) An administrative or civil action may not be maintained by the commissioner under this section to
4 enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this
5 chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by
6 the commissioner or the commissioner's staff of the facts constituting the violation.

7 (c) An action may not be maintained under this section to enforce any liability founded on a violation of
8 parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years
9 after the transaction on which the action is based."

10

11 **Section 3.** Section 30-10-306, MCA, is amended to read:

12 **"30-10-306. Criminal liabilities.** (1) ~~Any~~ A person who willfully violates any provision of parts 1 through
13 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter,
14 or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect
15 shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both. However,
16 if the person convicted has been previously convicted of a felony in any way involving securities, imprisonment
17 for not less than 1 year is mandatory.

18 (2) A person who willfully violates 30-10-301 with knowledge that the violation would affect a vulnerable
19 person shall upon conviction be fined not more than \$20,000 or imprisoned not more than 20 years, or both.

20 (3) An indictment or information may not be returned under parts 1 through 3 of this chapter more than
21 8 years after the alleged violation. However, the time limitation period may be extended allowing commencement
22 of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the
23 violation.

24 ~~(2)(4)~~ The commissioner may refer evidence that may be available concerning violations of parts 1
25 through 3 of this chapter or of any rule or order under parts 1 through 3 of this chapter to the attorney general or
26 the proper prosecuting attorney, who may in the prosecutor's discretion, with or without a reference, institute the
27 appropriate criminal proceedings under parts 1 through 3 of this chapter.

28 ~~(3)(5)~~ Parts 1 through 3 of this chapter do not limit the power of the state to punish any person for any
29 conduct that constitutes a crime."

30

1 **Section 4.** Section 30-10-1003, MCA, is amended to read:

2 **"30-10-1003. (Temporary) Definitions.** As used in this part, the following definitions apply:

3 (1) "Claimant" means a person who files an application for restitution assistance under this part on behalf
4 of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the
5 named party in a restitution award in a final order, the executor of a named party in a restitution award in a final
6 order, and the heirs and assigns of a named party in a restitution award in a final order.

7 (2) "Department" means the office of the securities commissioner established in 2-15-1901.

8 (3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated
9 by the commissioner.

10 (4) "Fund" means the securities restitution assistance fund created by 30-10-1004.

11 (5) "Securities violation" means a violation of this chapter and any related administrative rules.

12 (6) "Victim" means a person who was awarded restitution in a final order.

13 (7) "Vulnerable person" means:

14 (a) a person who is at least 60 years of age;

15 (b) a person who suffers from mental impairment because of frailties or dependencies typically related
16 to advanced age, such as dementia or memory loss; or

17 (c) a person who has a developmental disability as defined in 53-20-102. (Terminates June 30,
18 2017--sec. 16, Ch. 58, L. 2011.)"

19

20 **Section 5.** Section 30-10-1006, MCA, is amended to read:

21 **"30-10-1006. (Temporary) Application for restitution assistance -- maximum amount of restitution**
22 **assistance award.** (1) A person who is eligible for restitution assistance under this part may submit an
23 application, in a manner and form prescribed by the commissioner, to the department.

24 (2) An application must be received by the department within 2 years after the deadline for payment of
25 restitution established in the final order.

26 (3) ~~The~~ Except as provided in subsection (4), the maximum award from the fund for each claimant is the
27 lesser of \$25,000 or 25% of the amount of unpaid restitution awarded in a final order.

28 (4) If the claimant is a vulnerable person, the maximum award from the fund is the lesser of \$50,000 or
29 50% of the amount of unpaid restitution awarded in the final order. (Terminates June 30, 2017--sec. 16, Ch. 58,
30 L. 2011.)"

1
2 **NEW SECTION. Section 6. Saving clause.** [This act] does not affect rights and duties that matured,
3 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

4
5 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are severable from the invalid applications.

8
9 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

10 - END -