

HOUSE BILL NO. 24

INTRODUCED BY R. EHLI

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TO VULNERABLE PERSONS PROTECTIONS FROM FINANCIAL EXPLOITATION; PROVIDING FOR REPORTING OF FINANCIAL EXPLOITATION BY INVESTMENT ADVISERS AND OTHER QUALIFIED INDIVIDUALS; ALLOWING FOR THE DELAY OF DISBURSEMENTS; PROVIDING IMMUNITY; REQUIRING THE PROVISION OF RECORDS TO LAW ENFORCEMENT AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 30-10-103 AND 30-10-1003, MCA."

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

NEW SECTION. Section 1. Governmental disclosure -- immunity. (1) If a qualified individual or investment adviser reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual or investment adviser shall promptly notify the commissioner.

(2) A qualified individual or investment adviser who, in good faith and exercising reasonable care, makes a disclosure of information under this section is immune from administrative or civil liability that might otherwise arise from the disclosure or from any failure to notify the vulnerable person or the person's agent of the disclosure.

NEW SECTION. Section 2. Third-party disclosure -- immunity. (1) If a qualified individual or investment adviser reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual or investment adviser may notify any third party previously designated by the vulnerable person. Disclosure may not be made to a designated third party who is suspected of financial exploitation or other abuse of the vulnerable person.

(2) A qualified individual or investment adviser who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the disclosure.

1 **NEW SECTION. Section 3. Delaying disbursements -- immunity.** (1) A broker-dealer or investment
2 adviser may delay a disbursement from an account of a vulnerable person or an account on which a vulnerable
3 person is a beneficiary if:

4 (a) the broker-dealer, the investment adviser, or a qualified individual reasonably believes, after initiating
5 an internal review of the requested disbursement and the suspected financial exploitation, that the requested
6 disbursement may result in financial exploitation of the vulnerable person; and

7 (b) the broker-dealer or investment adviser:

8 (i) not more than 2 business days after the requested disbursement, provides written notification of the
9 delay and the reason for the delay to all parties authorized to transact business on the account, unless the party
10 is reasonably believed to have engaged in suspected or attempted financial exploitation of the vulnerable person;

11 (ii) not more than 2 business days after the requested disbursement, notifies the commissioner; and

12 (iii) continues the internal review of the suspected or attempted financial exploitation of the vulnerable
13 person, as necessary, and reports the investigation's results to the commissioner within 7 business days after
14 the requested disbursement.

15 (2) A delay of a disbursement authorized under this section expires upon the sooner of:

16 (a) a determination by the broker-dealer or investment adviser that the disbursement will not result in
17 financial exploitation of the vulnerable person; or

18 (b) 15 business days after the date on which the broker-dealer or investment adviser first delayed the
19 disbursement, unless the commissioner requests that the broker-dealer or investment adviser extend the delay.
20 If extended, the delay expires no more than 25 business days after the date on which the broker-dealer or
21 investment adviser first delayed the disbursement, unless the delay is terminated sooner by the commissioner
22 or by an order of a court of competent jurisdiction.

23 (3) A court of competent jurisdiction may enter an order extending the delay of the disbursement beyond
24 the timeframe provided in subsection (2) or may order other protective relief based on a petition of the
25 commissioner, the broker-dealer or investment adviser who initiated the delay under this section, or an interested
26 party.

27 (4) A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies
28 with this section is immune from administrative or civil liability that might otherwise arise from the delay in a
29 disbursement in accordance with this section.

30

1 **NEW SECTION. Section 4. Records.** (1) A broker-dealer or investment advisor shall provide access
2 to or copies of records that are relevant to the suspected or attempted financial exploitation of a vulnerable person
3 to the department of public health and human services provided for in 2-15-2201 and to law enforcement, either
4 as part of a referral to the department or to law enforcement or on request of the department or law enforcement
5 pursuant to an investigation. The records may include historical records as well as records relating to the most
6 recent transaction that may constitute financial exploitation of the vulnerable person.

7 (2) All records made available pursuant to this section are confidential information as defined in
8 2-6-1002.

9 (3) Nothing in this section limits or otherwise impedes the authority of the commissioner to access or
10 examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

11

12 **Section 5.** Section 30-10-103, MCA, is amended to read:

13 **"30-10-103. (Temporary) Definitions.** When used in parts 1 through 3 and 10 of this chapter, unless
14 the context requires otherwise, the following definitions apply:

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

17 (b) The term does not include:

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

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

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

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

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

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

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

30 (iv) foreign currency; and

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

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

3 (b) A federal covered adviser is not an investment adviser as defined in subsection ~~(11)~~ (12).

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

6 (10) "Financial exploitation" means:

7 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property
8 of a vulnerable person; or

9 (b) an act or omission taken by a person, including through the use of a power of attorney, guardianship,
10 or conservatorship of a vulnerable person, to:

11 (i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable
12 person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or
13 possession of the vulnerable person's money, assets, or property; or

14 (ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the
15 ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

16 ~~(10)~~(11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

17 ~~(11)~~(12) (a) "Investment adviser" means a person who, for compensation, engages in the business of
18 advising others, either directly or through publications or writings, as to the value of securities or as to the
19 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular
20 business, issues or promulgates analyses or reports concerning securities.

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

22 (i) as an integral component of other financially related services, provides the investment advisory
23 services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation, as part of a business; or

24 (ii) represents to any person that the financial planner or other person provides the investment advisory
25 services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation.

26 (c) The term does not include:

27 (i) an investment adviser representative;

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

29 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the
30 person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral,

1 or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the
2 purchase or sale of specific securities, and does not have custody of client funds or securities for investment
3 purposes;

4 (iv) a registered broker-dealer whose performance of services described in subsection ~~(11)(a)~~ (12)(a)
5 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
6 compensation;

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

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

11 (vii) an engineer or teacher whose performance of the services described in subsection ~~(11)(a)~~ (12)(a)
12 is solely incidental to the practice of the person's profession;

13 (viii) a federal covered adviser; or

14 (ix) other persons not within the intent of this subsection ~~(11)~~ (12) as the commissioner may by rule or
15 order designate.

16 ~~(12)~~(13) (a) "Investment adviser representative" means:

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

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

21 (B) manages accounts or portfolios of clients;

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

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

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

27 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance
28 of the services described in subsection ~~(12)(a)~~ (13)(a) of this section is solely incidental to the conduct of business
29 as a salesperson and for which the salesperson does not receive special compensation other than fees relating
30 to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal

1 covered adviser who has made a notice filing under parts 1 through 3 and 10 of this chapter.

2 ~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with
3 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
4 certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons
5 performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the
6 person or persons performing the acts and assuming the duties of depositor or manager pursuant to the
7 provisions of the trust or other agreement or instrument under which the security is issued.

8 ~~(14)~~(15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

9 ~~(15)~~(16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to
10 buy a security or interest in a security for value.

11 ~~(16)~~(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock
12 company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated
13 organization, a government, or a political subdivision of a government.

14 ~~(17)~~(18) "Precious metal" means the following, in coin, bullion, or other form:

15 (a) silver;

16 (b) gold;

17 (c) platinum;

18 (d) palladium;

19 (e) copper; and

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

21 (19) "Qualified individual" means an agent, an investment adviser representative, or a person who serves
22 in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

23 ~~(18)~~(20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

24 ~~(19)~~(21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or
25 interest in a security for value.

26 ~~(20)~~(22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer
27 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer
28 or issuer is a salesperson only if the person otherwise comes within this definition.

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

30 (i) an issuer in:

- 1 (A) effecting a transaction in a security exempted by 30-10-104(1) through (3) or (8) through (11);
- 2 (B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant
3 to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;
- 4 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities
5 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a
6 prospective buyer; or
- 7 (D) effecting transactions with existing employees, partners, or directors of the issuer if no commission
8 or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
- 9 (ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the
10 Securities Exchange Act of 1934.
- 11 ~~(24)~~(23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005",
12 "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those
13 names.
- 14 ~~(22)~~(24) (a) "Security" means any:
- 15 (i) note;
- 16 (ii) stock;
- 17 (iii) treasury stock;
- 18 (iv) bond;
- 19 (v) commodity investment contract;
- 20 (vi) commodity option;
- 21 (vii) debenture;
- 22 (viii) evidence of indebtedness;
- 23 (ix) certificate of interest or participation in any profit-sharing agreement;
- 24 (x) collateral-trust certificate;
- 25 (xi) preorganization certificate or subscription;
- 26 (xii) transferable shares;
- 27 (xiii) investment contract;
- 28 (xiv) voting-trust certificate;
- 29 (xv) certificate of deposit for a security;
- 30 (xvi) viatical settlement purchase agreement;

1 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of
2 production under a title or lease; or

3 (xviii) in general:

4 (A) interest or instrument commonly known as a security;

5 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
6 securities, including any interest in a security or based on the value of a security; or

7 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,
8 or warrant or right to subscribe to or purchase any of the items in this subsection ~~(22)(a)(xviii)~~ (24)(a)(xviii).

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

12 ~~(23)~~(25) "State" means any state, territory, or possession of the United States, as well as the District of
13 Columbia and Puerto Rico.

14 ~~(24)~~(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
15 and "offer".

16 ~~(25)~~(27) "Vulnerable person" means:

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

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

20 (c) a person who has a developmental disability as defined in 53-20-102; or

21 (d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means
22 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or
23 volitional functions. The term does not include:

24 (i) addiction to drugs or alcohol;

25 (ii) drug or alcohol intoxication;

26 (iii) intellectual disability; or

27 (iv) epilepsy. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)

28 **30-10-103. (Effective July 1, 2017) Definitions.** When used in parts 1 through 3 of this chapter, unless
29 the context requires otherwise, the following definitions apply:

30 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities

1 for the account of others or for the person's own account.

2 (b) The term does not include:

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

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

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

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

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

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

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

15 (iv) foreign currency; and

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

17 (b) Commodity does not include:

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

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

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

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

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

26 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase
27 or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or
28 purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is
29 intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery
30 contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any

1 commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be
2 offered or sold for speculation or investment purposes.

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

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

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

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

18 (b) ~~The term does not include a person who would be exempt from the definition of investment adviser~~
19 ~~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)~~
20 A federal covered advisor is not an investment advisor as defined in subsection (12).

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

23 (10) "Financial exploitation" means:

24 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property
25 of a vulnerable person; or

26 (b) an act or omission taken by a person, including through the use of a power of attorney, guardianship,
27 or conservatorship of a vulnerable person, to:

28 (i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable
29 person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or
30 possession of the vulnerable person's money, assets, or property; or

1 (ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the
2 ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

3 ~~(10)(11)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

4 ~~(11)(12)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business of
5 advising others, either directly or through publications or writings, as to the value of securities or as to the
6 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular
7 business, issues or promulgates analyses or reports concerning securities.

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

9 (i) as an integral component of other financially related services, provides the investment advisory
10 services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation, as part of a business; or

11 (ii) represents to any person that the financial planner or other person provides the investment advisory
12 services described in subsection ~~(11)(a)~~ (12)(a) to others for compensation.

13 (c) The term does not include:

14 (i) an investment adviser representative;

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

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

21 (iv) a registered broker-dealer whose performance of services described in subsection ~~(11)(a)~~ (12)(a)
22 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
23 compensation;

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

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

28 (vii) an engineer or teacher whose performance of the services described in subsection ~~(11)(a)~~ (12)(a)
29 is solely incidental to the practice of the person's profession;

30 (viii) a federal covered adviser; or

1 (ix) other persons not within the intent of this subsection ~~(11)~~ (12) as the commissioner may by rule or
2 order designate.

3 ~~(12)~~(13) (a) "Investment adviser representative" means:

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

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

8 (B) manages accounts or portfolios of clients;

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

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

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

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

19 ~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with
20 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
21 certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons
22 performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the
23 person or persons performing the acts and assuming the duties of depositor or manager pursuant to the
24 provisions of the trust or other agreement or instrument under which the security is issued.

25 ~~(14)~~(15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

26 ~~(15)~~(16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to
27 buy a security or interest in a security for value.

28 ~~(16)~~(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock
29 company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated
30 organization, a government, or a political subdivision of a government.

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

1 ~~(22)~~(24) (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;

13 (xii) transferable shares;

14 (xiii) investment contract;

15 (xiv) voting-trust certificate;

16 (xv) certificate of deposit for a security;

17 (xvi) viatical settlement purchase agreement;

18 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of

19 production under a title or lease; or

20 (xviii) in general:

21 (A) interest or instrument commonly known as a security;

22 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of

23 securities, including any interest in a security or based on the value of a security; or

24 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,

25 or warrant or right to subscribe to or purchase any of the items in this subsection ~~(22)(a)(xviii)~~ (24)(a)(xviii).

26 (b) Security does not include an insurance or endowment policy or annuity contract under which an

27 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some

28 other specified period.

29 ~~(23)~~(25) "State" means any state, territory, or possession of the United States, as well as the District of

30 Columbia and Puerto Rico.

1 ~~(24)~~(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
2 and "offer".

3 ~~(25)~~(27) "Vulnerable person" means:

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

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

7 (c) a person who has a developmental disability as defined in 53-20-102; or

8 (d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means
9 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or
10 volitional functions. The term does not include:

11 (i) addiction to drugs or alcohol;

12 (ii) drug or alcohol intoxication;

13 (iii) intellectual disability; or

14 (iv) epilepsy."

15

16 **Section 6.** Section 30-10-1003, MCA, is amended to read:

17 **"30-10-1003. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

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

28 (7) "Vulnerable person" means:

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

30 (b) a person who suffers from mental impairment because of frailties or dependencies typically related

1 to advanced age, such as dementia or memory loss; or

2 (c) a person who has a developmental disability as defined in 53-20-102; or

3 (d) a person with a mental disorder. For the purposes of this subsection (7)(d), "mental disorder" means
4 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or
5 volitional functions. The term does not include:

6 (i) addiction to drugs or alcohol;

7 (ii) drug or alcohol intoxication;

8 (iii) intellectual disability; or

9 (iv) epilepsy. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)"

10

11 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified
12 as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to
13 [sections 1 through 4].

14

- END -