

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) ~~(A) If a qualified individual or investment adviser~~ AN EMPLOYEE OF AN ENTITY ENGAGED IN TRANSACTIONS REGULATED UNDER THIS CHAPTER MAY TAKE THE FOLLOWING ACTIONS IF THE EMPLOYEE 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:~~

(I) AN INVESTMENT ADVISER, INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON MAY REPORT THE SUSPECTED EXPLOITATION TO A QUALIFIED INDIVIDUAL; AND

(II) A QUALIFIED INDIVIDUAL MAY notify the commissioner.

(B) IN THE ABSENCE OF A QUALIFIED INDIVIDUAL TO WHOM SUSPECTED FINANCIAL EXPLOITATION COULD BE REPORTED, AN INVESTMENT ADVISER, INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON MAY REPORT THE SUSPECTED EXPLOITATION DIRECTLY TO THE COMMISSIONER.

(2) A qualified individual, ~~or investment adviser,~~ INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON 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~~



1 investment adviser, INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON reasonably believes that financial
 2 exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the
 3 qualified individual, ~~or investment adviser, INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON~~ may notify any
 4 third party ~~previously designated by CLOSELY CONNECTED TO~~ the vulnerable person. Disclosure may not be made
 5 to a ~~designated~~ third party who is suspected of financial exploitation or other abuse of the vulnerable person.

6 (2) A qualified individual, ~~or investment adviser, INVESTMENT ADVISER REPRESENTATIVE, OR SALESPERSON~~
 7 who, in good faith and exercising reasonable care, complies with this section is immune from administrative or
 8 civil liability that might otherwise arise from the disclosure.

9
 10 **NEW SECTION. Section 3. Delaying disbursements -- immunity.** (1) A broker-dealer or investment

11 adviser may delay a disbursement from an account of a vulnerable person or an account on which a vulnerable
 12 person is a beneficiary if:

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

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

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

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

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

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

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

27 (b) 15 business days after the date on which the broker-dealer or investment adviser first delayed the
 28 disbursement, unless the commissioner requests that the broker-dealer or investment adviser extend the delay.
 29 If extended, the delay expires no more than 25 business days after the date on which the broker-dealer or
 30 investment adviser first delayed the disbursement, unless the delay is terminated sooner by the commissioner

1 or by an order of a court of competent jurisdiction.

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

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

9

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

16 (2) All records made available pursuant to this section are confidential information as defined in
17 2-6-1002.

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

20

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

22 **"30-10-103. (Temporary) Definitions.** When used in parts 1 through 3 and 10 of this chapter, unless
23 the context requires otherwise, the following definitions apply:

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

26 (b) The term does not include:

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

28 (ii) a person who does not have a place of business in this state if the person effects transactions in this
29 state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers,
30 or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the

1 Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional
2 buyers, whether acting for themselves or as trustee.

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

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

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

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

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

9 (iv) foreign currency; and

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

11 (b) Commodity does not include:

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

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

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

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

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

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

27 (b) A commodity investment contract does not include a contract or agreement that requires, and under
28 which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the
29 purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or
30 agreement. The purchaser is not considered to have received physical delivery of the total amount of each

1 commodity to be purchased under the contract or agreement when the commodity or commodities are held as
2 collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the
3 purchase of each commodity or commodities.

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

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

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

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

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

15 (10) "Financial exploitation" means:

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

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

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

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

25 ~~(10)~~(11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

26 ~~(11)~~(12) (a) "Investment adviser" means a person who, for compensation, engages in the business of
27 advising others, either directly or through publications or writings, as to the value of securities or as to the
28 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular
29 business, issues or promulgates analyses or reports concerning securities.

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

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

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

5 (c) The term does not include:

6 (i) an investment adviser representative;

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

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

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

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

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

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

22 (viii) a federal covered adviser; or

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

25 ~~(12)~~(13) (a) "Investment adviser representative" means:

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

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

30 (B) manages accounts or portfolios of clients;

1 (C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or
2 (D) supervises employees who perform any of the foregoing; and
3 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative with
4 a place of business in this state as those terms are defined by the securities and exchange commission under
5 the Investment Advisers Act of 1940.

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

11 ~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with
12 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
13 certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons
14 performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the
15 person or persons performing the acts and assuming the duties of depositor or manager pursuant to the
16 provisions of the trust or other agreement or instrument under which the security is issued.

17 ~~(14)~~(15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

18 ~~(15)~~(16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to
19 buy a security or interest in a security for value.

20 ~~(16)~~(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock
21 company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated
22 organization, a government, or a political subdivision of a government.

23 ~~(17)~~(18) "Precious metal" means the following, in coin, bullion, or other form:

24 (a) silver;

25 (b) gold;

26 (c) platinum;

27 (d) palladium;

28 (e) copper; and

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

30 (19) "Qualified individual" means an agent, an investment adviser representative, or a person who serves

1 in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

2 ~~(18)~~(20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

3 ~~(19)~~(21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or
4 interest in a security for value.

5 ~~(20)~~(22) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer
6 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer
7 or issuer is a salesperson only if the person otherwise comes within this definition.

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

9 (i) an issuer in:

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

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

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

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

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

20 ~~(21)~~(23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005",
21 "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those
22 names.

23 ~~(22)~~(24) (a) "Security" means any:

24 (i) note;

25 (ii) stock;

26 (iii) treasury stock;

27 (iv) bond;

28 (v) commodity investment contract;

29 (vi) commodity option;

30 (vii) debenture;

- 1 (viii) evidence of indebtedness;
- 2 (ix) certificate of interest or participation in any profit-sharing agreement;
- 3 (x) collateral-trust certificate;
- 4 (xi) preorganization certificate or subscription;
- 5 (xii) transferable shares;
- 6 (xiii) investment contract;
- 7 (xiv) voting-trust certificate;
- 8 (xv) certificate of deposit for a security;
- 9 (xvi) viatical settlement purchase agreement;
- 10 (xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of
- 11 production under a title or lease; or
- 12 (xviii) in general:
- 13 (A) interest or instrument commonly known as a security;
- 14 (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
- 15 securities, including any interest in a security or based on the value of a security; or
- 16 (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,
- 17 or warrant or right to subscribe to or purchase any of the items in this subsection ~~(22)(a)(xviii)~~ (24)(a)(xviii).
- 18 (b) Security does not include an insurance or endowment policy or annuity contract under which an
- 19 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some
- 20 other specified period.
- 21 ~~(23)~~(25) "State" means any state, territory, or possession of the United States, as well as the District of
- 22 Columbia and Puerto Rico.
- 23 ~~(24)~~(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
- 24 and "offer".
- 25 ~~(25)~~(27) "Vulnerable person" means:
- 26 (a) a person who is at least 60 years of age;
- 27 (b) a person who suffers from mental impairment because of frailties or dependencies typically related
- 28 to advanced age, such as dementia or memory loss; ~~or~~
- 29 (c) a person who has a developmental disability as defined in 53-20-102; or
- 30 (d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means

1 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or
2 volitional functions. The term does not include:

3 (i) addiction to drugs or alcohol;

4 (ii) drug or alcohol intoxication;

5 (iii) intellectual disability; or

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

7 **30-10-103. (Effective July 1, 2017) Definitions.** When used in parts 1 through 3 of this chapter, unless
8 the context requires otherwise, the following definitions apply:

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

11 (b) The term does not include:

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

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

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

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

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

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

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

24 (iv) foreign currency; and

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

26 (b) Commodity does not include:

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

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

30 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private

1 sale by the owner.

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

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

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

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

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

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

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

27 ~~(b) The term does not include a person who would be exempt from the definition of investment adviser~~
28 ~~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)~~
29 A federal covered advisor is not an investment advisor as defined in subsection (12).

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) "Financial exploitation" means:

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

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

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

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

12 ~~(10)~~(11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

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

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

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

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

22 (c) The term does not include:

23 (i) an investment adviser representative;

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

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

30 (iv) a registered broker-dealer whose performance of services described in subsection ~~(11)(a)~~ (12)(a)

1 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
2 compensation;

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

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

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

9 (viii) a federal covered adviser; or

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

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

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

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

17 (B) manages accounts or portfolios of clients;

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

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

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

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

28 ~~(13)~~(14) "Issuer" means any person who issues or proposes to issue any security, except that with
29 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
30 certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons

1 performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the
2 person or persons performing the acts and assuming the duties of depositor or manager pursuant to the
3 provisions of the trust or other agreement or instrument under which the security is issued.

4 ~~(14)~~(15) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

5 ~~(15)~~(16) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to
6 buy a security or interest in a security for value.

7 ~~(16)~~(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock
8 company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated
9 organization, a government, or a political subdivision of a government.

10 ~~(17)~~(18) "Precious metal" means the following, in coin, bullion, or other form:

11 (a) silver;

12 (b) gold;

13 (c) platinum;

14 (d) palladium;

15 (e) copper; and

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

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

19 ~~(18)~~(20) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

20 ~~(19)~~(21) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or
21 interest in a security for value.

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

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

26 (i) an issuer in:

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

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

30 (C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities

1 Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a
2 prospective buyer; or

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

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

7 ~~(21)~~(23) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005",
8 "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those
9 names.

10 ~~(22)~~(24) (a) "Security" means any:

11 (i) note;

12 (ii) stock;

13 (iii) treasury stock;

14 (iv) bond;

15 (v) commodity investment contract;

16 (vi) commodity option;

17 (vii) debenture;

18 (viii) evidence of indebtedness;

19 (ix) certificate of interest or participation in any profit-sharing agreement;

20 (x) collateral-trust certificate;

21 (xi) preorganization certificate or subscription;

22 (xii) transferable shares;

23 (xiii) investment contract;

24 (xiv) voting-trust certificate;

25 (xv) certificate of deposit for a security;

26 (xvi) viatical settlement purchase agreement;

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

29 (xviii) in general:

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

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

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

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

8 ~~(23)~~(25) "State" means any state, territory, or possession of the United States, as well as the District of
9 Columbia and Puerto Rico.

10 ~~(24)~~(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
11 and "offer".

12 ~~(25)~~(27) "Vulnerable person" means:

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

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

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

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

20 (i) addiction to drugs or alcohol;

21 (ii) drug or alcohol intoxication;

22 (iii) intellectual disability; or

23 (iv) epilepsy."

24

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

26 **"30-10-1003. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

- 1 (2) "Department" means the office of the securities commissioner established in 2-15-1901.
- 2 (3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated
3 by the commissioner.
- 4 (4) "Fund" means the securities restitution assistance fund created by 30-10-1004.
- 5 (5) "Securities violation" means a violation of this chapter and any related administrative rules.
- 6 (6) "Victim" means a person who was awarded restitution in a final order.
- 7 (7) "Vulnerable person" means:
- 8 (a) a person who is at least 60 years of age;
- 9 (b) a person who suffers from mental impairment because of frailties or dependencies typically related
10 to advanced age, such as dementia or memory loss; ~~or~~
- 11 (c) a person who has a developmental disability as defined in 53-20-102; or
- 12 (d) a person with a mental disorder. For the purposes of this subsection (7)(d), "mental disorder" means
13 any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or
14 volitional functions. The term does not include:
- 15 (i) addiction to drugs or alcohol;
- 16 (ii) drug or alcohol intoxication;
- 17 (iii) intellectual disability; or
- 18 (iv) epilepsy. (Terminates June 30, 2017--sec. 16, Ch. 58, L. 2011.)"

19

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

23 - END -