

HOUSE BILL NO. 378

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Business and Industry.
February 17, 1981	Committee recommend bill do pass as amended. Report adopted.
February 18, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass.
February 20, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 97; Noes, 1. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Business and Industry.
March 21, 1981	Committee recommend bill be concurred in. Report adopted.
March 24, 1981	Motion pass consideration.
March 25, 1981	Second reading, concurred in.
March 27, 1981	Third reading, concurred in. Ayes, 50; Noes, 0.

IN THE HOUSE

March 28, 1981

Returned from Senate.  
Concurred in. Sent to  
enrolling.

Reported correctly enrolled.



1 "Assignment", as used in subsection (b), includes any direct  
 2 or indirect transfer or hypothecation of an investment  
 3 advisory contract by the assignor or of a controlling block  
 4 of the assignor's outstanding voting securities by a  
 5 security holder of the assignor; but if the investment  
 6 adviser is a partnership, no assignment of an investment  
 7 advisory contract is considered to result from the death or  
 8 withdrawal of a minority of the members of the investment  
 9 adviser having only a minority interest in the business of  
 10 the investment adviser or from the admission to the  
 11 investment adviser of one or more members who, after  
 12 admission, will be only a minority of the members and will  
 13 have only a minority interest in the business."

14 Section 2. Section 30-10-307, MCA, is amended to read:

15 "30-10-307. Civil liabilities. (1) Any person who  
 16 offers or sells a security in violation of any provisions of  
 17 30-10-202 through 30-10-205 or offers or sells a security by  
 18 means of fraud or misrepresentation is liable to the person  
 19 buying the security from him, who may sue either at law or  
 20 in equity to recover the consideration paid for the  
 21 security, together with interest at 6% 10% per annum from  
 22 the date of payment, costs, and reasonable attorneys' fees,  
 23 less the amount of any income received on the security, upon  
 24 the tender of the security, or for damages if he no longer  
 25 owns the security. Damages are the amount that would be

1 recoverable upon a tender less:

2 (a) the value of the security when the buyer disposed  
 3 of it; and

4 (b) interest at 6% 10% per annum from the date of  
 5 disposition.

6 (2) Every person who directly or indirectly controls a  
 7 seller liable under subsection (1), every partner, officer,  
 8 or director (or person occupying a similar status or  
 9 performing similar functions) or employee of such a seller,  
 10 and every broker-dealer or salesman who participates or  
 11 materially aids in the sale is liable jointly and severally  
 12 with and to the same extent as the seller if the nonseller  
 13 knew, or in the exercise of reasonable care could have  
 14 known, of the existence of the facts by reason of which the  
 15 liability is alleged to exist. There shall be contribution  
 16 among the several persons so liable.

17 (3) Any tender specified in this section may be made  
 18 at any time before entry of judgment. A cause of action  
 19 under this statute survives the death of any person who  
 20 might have been a plaintiff or a defendant. No person may  
 21 sue under this section:

22 (a) if the buyer has received a written offer, at a  
 23 time when he owned the security, to refund the consideration  
 24 paid, together with interest at 6% 10% per annum from the  
 25 date of payment, less the amount of any income received on

1 the security and he failed to accept the offer within 30  
2 days of its receipt; or

3 (b) if the buyer has received a written offer at a  
4 time when he did not own the security in the amount that  
5 would be recoverable under subsection (1) upon a tender  
6 less:

7 (i) the value of the security when the buyer disposed  
8 of it; and

9 (ii) interest at ~~6%~~ 10% per annum from the date of  
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11 (4) No person who has made or engaged in the  
12 performance of any contract in violation of any provision of  
13 parts 1 through 3 of this chapter or any rule or order  
14 hereunder or who has acquired any purported right under any  
15 such contract with knowledge of the facts by reason of which  
16 its making or performance was in violation may base any suit  
17 on the contract. Any condition, stipulation, or provision  
18 binding any person acquiring any security to waive  
19 compliance with any provision of parts 1 through 3 of this  
20 chapter or any rule or order hereunder is void as against  
21 public policy and in the public interest."

-End-

Approved by Committee  
on Business and Industry

1 HOUSE BILL NO. 378  
 2 INTRODUCED BY HEMSTAD, SMITH  
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA  
 7 SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND  
 8 30-10-307, MCA."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 30-10-301, MCA, is amended to read:  
 12 "30-10-301. Prohibited Fraudulent and other prohibited  
 13 practices. (1) It is unlawful for any person, in connection  
 14 with the offer, sale, or purchase of any security, directly  
 15 or indirectly, in, into, or from this state, to:  
 16 (a) employ any device, scheme, or artifice to defraud;  
 17 (b) make any untrue statement of a material fact or  
 18 omit to state a material fact necessary in order to make the  
 19 statements made, in the light of the circumstances under  
 20 which they are made, not misleading; or  
 21 (c) engage in any act, practice, or course of business  
 22 which operates or would operate as a fraud or deceit upon  
 23 any person.  
 24 (2) It is unlawful for any person who receives any  
 25 consideration from another person primarily for advising the

1 other person as to the value of securities or their purchase  
 2 or sale, whether through the issuance of analysis or reports  
 3 or otherwise, to:  
 4 (a) employ any device, scheme, or artifice to defraud  
 5 the other person; or  
 6 (b) engage in any act, practice, or course of business  
 7 which operates or would operate as a fraud or deceit upon  
 8 the other person.  
 9 (3) It is unlawful for any investment adviser to enter  
 10 into, extend, or renew any investment advisory contract  
 11 unless it provides that:  
 12 (a) the investment adviser shall not be compensated on  
 13 the basis of a share of capital gains upon or capital  
 14 appreciation of the funds or any portion of the funds of the  
 15 client;  
 16 (b) no assignment of the contract may be made by the  
 17 investment adviser without the consent of the other party to  
 18 the contract; and  
 19 (c) the investment adviser, if a partnership, shall  
 20 notify the other party to the contract of any change in the  
 21 membership of the partnership within a reasonable time after  
 22 the change. Subsection (a) does not prohibit an investment  
 23 advisory contract which provides for compensation based upon  
 24 the total value of a fund averaged over a definite period or  
 25 as of definite dates or taken as of a definite date.

1 "Assignment", as used in subsection (b), includes any direct  
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 4 of the assignor's outstanding voting securities by a  
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 19 buying the security from him, who may sue either at law or  
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