## SENATE BILL NO. 350

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# INTRODUCED BY CRIPPEN, KEYSER

BY REQUEST OF THE SECURITIES DIVISION OF THE STATE AUDITOR'S OFFICE

## IN THE SENATE

| February 8, 1985  | Introduced and referred to<br>Committee on Business and<br>Industry. |
|-------------------|--|
| February 11, 1985 | Fiscal Note requested.   |
| February 14, 1985 | Committee recommend bill do pass as amended. Report adopted.         |
| February 15, 1985 | Fiscal Note returned.  |
|                   | Bill printed and placed on members' desks.                           |
| February 16, 1985 | Second reading, do pass.   |
| February 18, 1985 | Considered correctly engrossed.                                      |
| February 19, 1985 | Third reading, passed.<br>Ayes, 44; Noes, 0.                         |
|                   | Transmitted to House.  |
| IN THE            | HOUSE  |
| February 27, 1985 | Introduced and referred to<br>Committee on Business and Labor.       |
| March 28, 1985    | Committee recommend bill be concurred in. Report adopted.            |
| March 30, 1985    | Second reading, concurred in.  |
| April 1, 1985     | Third reading, concurred in.   |
|                   | Returned to Senate.  |

## IN THE SENATE

| April 1, 1985 | Received from House.         |
|---------------|------------------------------|
| April 2, 1985 | Sent to enrolling.           |
|               | Reported correctly enrolled. |

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LC 1735/01

1 2 INTRODUCED BY BY REQUEST OF THE SECURITIES DIVISION OF THE 3 STATE AUDITOR'S OFFICE ۵

A BILL FOR AN ACT ENTITLED: 6 "AN ACT PROVIDING FOR THE 7 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A 8 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED 9 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A зJ BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING SANCTIONS FOR FAILURE TO PAY SUCH FINES: AMENDING SECTIONS 11 12 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE 13 EFFECTIVE DATE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 30-10-201, MCA, is amended to read:
"30-10-201. Registration of broker-dealers, salesmen,
and investment advisers. (1) It is unlawful for any person

to transact business in this state as a broker-dealer or
salesman, except in transactions exempt under 30-10-105,
unless he is registered under parts 1 through 3 of this
chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is

Nontana Legislative Council

1 registered under parts 1 through 3 of this chapter.

2 (3) It is unlawful for any person to transact business3 in this state as an investment adviser unless:

4 (a) he is so registered under parts 1 through 3 of
5 this chapter;

6 (b) he is registered as a broker-dealer under parts 17 through 3 of this chapter; or

8 (c) his only clients in this state are investment
9 companies, as defined in the Investment Company Act of 1940,
10 or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent 11 12 for an issuer or as an agent for a broker-dealer in the 13 offer or sale of securities for an issuer, or an investment 14 adviser may apply for registration by filing with the 15 commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. 16 17 Except for persons in the employ of brokerage firms governed 18 by the regulations of the securities and exchange commission, all salesmen must be legal residents of this 19 20 state and must have actually resided in this state for a period of at least 1 year next prior to the date of 21 22 application for registration. The commissioner may, upon 23 request and for good cause shown by an applicant, waive the 24 residency requirement. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance 25

INTRODUCED BILL -2-5B 3.50

## LC 1735/01

with the financial responsibility requirements prescribed by 1 the Securities Exchange Act of 1934 and by regulations 2 adopted under it, may, in the discretion of the 3 commissioner, be required to file with the commissioner a 4 5 bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount 6 determined by the commissioner, payable to the state of 7 Montana and conditioned upon the faithful compliance with 8 the provisions of parts 1 through 3 of this chapter, and 9 provide that upon failure to so comply, the salesman shall 10 11 be liable to any and all persons who may suffer loss by 12 reason thereof.

13 (5) The application shall contain whatever information14 the commissioner requires.

15 (6) When the registration requirements are complied16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 18 following such registration or such other time as the 19 commissioner may by rule adopt and may be renewed. The 20 21 registration of a salesman is not effective during any period when he is not associated with an issuer or a 22 23 registered broker-dealer specified in his application. When 24 a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or 25

1 broker-dealer shall promptly notify the commissioner.

2 (8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the 3 commissioner prior to the expiration thereof an application 4 5 containing such information as the commissioner may require to indicate any material change in the information contained 6 7 in the original application or any renewal application for registration as a broker-dealer, salesman, or investment 8 adviser filed with the commissioner by the applicant, 9 payment of the prescribed fee, and, in the case of a 10 broker-dealer, by filing a financial statement showing the 11 12 financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment 13 adviser may file an application for registration of a 14 successor, to become effective upon approval of 15 the commissioner. 16

(9) Every registered broker-dealer and investment 17 18 adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), 19 as may be prescribed by the commissioner. All records so 20 required shall be preserved for 3 years unless the 21 commissioner prescribes otherwise for particular types of 22 records. All the records of a registered broker-dealer or 23 24 investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other 25

LC 1735/01

-4-

examinations, within or without this state, by
 representatives of the commissioner, as the commissioner
 considers necessary or appropriate in the public interest or
 for the protection of investors.

5 (10) The commissioner may by order deny, suspend, or 6 revoke registration of any broker-dealer, salesman, or 7 investment adviser if he finds that the order is in the 8 public interest and that the applicant or registrant or, in 9 the case of a broker-dealer or investment adviser, any 10 partner, officer, or director:

11 (a) has filed an application for registration under 12 this section which, as of its effective date or as of any 13 date after filing in the case of an order denying 14 effectiveness, was incomplete in any material respect or 15 contained any statement which was, in the light of the 16 circumstances under which it was made, false or misleading 17 with respect to any material fact;

(b) has willfully violated or willfully failed to
comply with any provision of parts 1 through 3 of this
chapter or a predecessor law or any rule or order under
parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a
security or any aspect of the securities business or any
felony;

25 (d) is permanently or temporarily enjoined by any

court of competent jurisdiction from engaging in or
 continuing any conduct or practice involving any aspect of
 the securities business;

4 (e) is the subject of an order of the commissioner 5 denying, suspending, or revoking registration as a 6 broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 7 5 years by the securities administrator of any other state 8 or by the federal securities and exchange commission denying 9 or revoking registration as a broker-dealer, salesman, or 10 11 investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is 12 the subject of an order of the federal securities and 13 exchange commission suspending or expelling him from a 14 national securities exchange or national securities 15 association registered under the Securities Exchange Act of 16 1934 or is the subject of a United States post office fraud 17 18 order, but:

(i) the commissioner may not institute a revocation or
suspension proceeding under this subsection (f) more than 1
year from the date of the order relied on; and

(ii) he may not enter any order under this subsection
(f) on the basis of an order unless that order was based on
facts which would currently constitute a ground for an order
under this section;

-5-

-6-

#### LC 1735/01

(g) has engaged in dishonest or unethical practices in
 the securities business;

3 (h) is insolvent, either in the sense that his 4 liabilities exceed his assets or in the sense that he cannot 5 meet his obligations as they mature, but the commissioner 6 may not enter an order against a broker-dealer or investment 7 adviser under this subsection (h) without a finding of 8 insolvency as to the broker-dealer or investment adviser;

9 (i) has not complied with a condition imposed by the 10 commissioner under this section or is not qualified on the 11 basis of such factors as training, experience, or knowledge 12 of the securities business; or

13 (j) has failed to pay the proper filing fee, but the 14 commissioner may enter only a denial order under this 15 subsection (j), and he shall vacate any such order when the 16 deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) 17 of this section, the commissioner shall promptly notify the 18 19 applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a 20 21 salesman, that it has been entered and of the reasons 22 therefor and that if requested by the applicant or 23 registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set 24 25 down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or 6 applicant for registration is no longer in existence or has 7 8 ceased to do business as a broker-dealer, investment 9 adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, 10 conservator, or guardian or cannot be located after 11 reasonable search, the commissioner may by order cancel the 12 registration or application. 13

14 (13) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, or investment 15 adviser under subsection (10), impose a fine not to exceed 16 \$5,000 upon such broker-dealer, salesman, or investment 17 adviser. The fine is in addition to all other penalties 18 19 imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and 20 21 deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be 22 taken pursuant to 30-10-308. If any broker-dealer, salesman, 23 or investment adviser fails to pay a fine referred to in 24 this subsection, the amount of the fine is a first lien upon 25

1 all of the assets and property of such broker-dealer, 2 salesman, or investment adviser in this state and may be 3 recovered by suit by the commissioner and deposited in the 4 general fund. Failure of a broker-dealer, salesman, or 5 investment adviser to pay a fine also constitutes a 6 forfeiture of his right to do business in this state under 7 parts 1 through 3 of this chapter."

8 Section 2. Section 30-10-305, MCA, is amended to read:
9 "30-10-305. Injunctions and other remedies. (1)
10 Whenever it appears to the commissioner that any person has
11 engaged or is about to engage in any act or practice
12 constituting a violation of any provision of parts 1 through
13 of this chapter or any rule or order hereunder, he may in
14 his discretion:

15 (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable 16 notice and opportunity for a hearing. The commissioner may 17 18 issue a temporary order pending the hearing that remains in 19 effect until 10 days after any hearing is held or that 20 becomes final if the person to whom notice is addressed does 21 not request a hearing within 15 days after receipt of the 22 notice; or

(b) without the issuance of a cease and desist order,
bring an action in any court of competent jurisdiction to
enjoin any such acts or practices and to enforce compliance

with parts 1 through 3 of this chapter or any rule or order 1 2 hereunder. Upon a proper showing, a permanent or temporary 3 injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for 4 the defendant or the defendant's assets. The commissioner 5 may not be required to post a bond. If the commissioner 6 7 prevails, he is entitled to reasonable attorneys' fees as fixed by the court. 8

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

(3) The commissioner may, after giving reasonable 15 notice and an opportunity for a hearing under this section, 16 17 impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice 18 constituting a violation of any provision of parts 1 through 19 3 of this chapter or any rule or order issued under parts 1 20 through 3 of this chapter. The fine is in addition to all 21 other penalties imposed by the laws of this state and must 22 23 be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any 24 fine under this subsection is an order from which an appeal 25

-10-

### LC 1735/01

may be taken pursuant to 30-10-308. If any person fails to 1 2 pay a fine referred to in this subsection, the amount of the fine is a first lien upon all of the assets and property of 3 such person in this state and may be recovered by suit by 4 5 the commissioner and deposited in the general fund. Failure 6 of the person to pay a fine also constitutes a forfeiture of 7 his right to do business in this state under parts 1 through 8 3 of this chapter." NEW SECTION. Section 3. Extension of authority. Any 9 existing authority of the securities commissioner to make 10 rules on the subject of the provisions of this act is 11 extended to the provisions of this act. 12 13 NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

-End-

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## STATE OF MONTANA

### FISCAL NOTE

REQUEST NO. FNN402-85

Form BD-15

In compliance with a written request received <u>February 11</u> Fiscal Note for <u>S.B. 350</u> Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 350 is an act to provide for the imposition of fines by the Securities Commissioner upon a finding that the Securities Act has been violated or upon the revocation or suspension of the license of a broker-dealer, salesman, or investment advisor.

#### ASSUMPTIONS:

- 1. There are four types of enforcement actions which could result in fines: (1) revocation, suspension, or denial of a license; (2) cease and desist order; (3) consent order; and (4) permanent injunction.
- 2. There will always be a fine on a revocation or suspension.
- 3. There will be at least two violations per order.
- 4. There will be an average of three violations, per person, per order.
- 5. There will always be a fine in an injunction proceeding.
- 6. There will always be a fine in a consent order.
- 7. Sixty percent of fines imposed will be collected.
- 8. An average fine is \$250, per person, per violation.
- 9. The cost of imposing the fine can be absorbed without additional funds, as can the collection of the fines, unless the Commissioner requires court enforcement.

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#### FISCAL IMPACT:

| <u>FY 1986</u> |  |
|----------------|--|
| ed Law         |  |
| 450            |  |
| 500            |  |
|                |  |
| 950            |  |
| 2              |  |

| FY          | 1987                                  |  |
|-------------|---------------------------------------|--|
| Current Law | Proposed Law                          |  |
| \$ -0-      | \$ 12,600                             |  |
| -0-         | 500                                   |  |
| •           | · · · · · · · · · · · · · · · · · · · |  |
| \$ -0-      | \$ 12,100                             |  |
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BUDGET DIRECTOR Office of Budget and Program Planning

Date: Feb 15 17 513,35

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| APPROVED | ΒY | COMM. | 0 N |
|----------|----|-------|-----|
| BUSINESS |    |       |     |

| 1 | SENATE BILL NO. 350                          |
|---|--|
| 2 | INTRODUCED BY CRIPPEN, KEYSER                |
| 3 | BY REQUEST OF THE SECURITIES DIVISION OF THE |
| 4 | STATE AUDITOR'S OFFICE                       |
| 5 |  |

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A 7 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED 8 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A 9 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING 10 SANCTIONS FOR FAILURE TO PAY SUCH FINES: AMENDING SECTIONS 11 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE 12 13 EFFECTIVE DATE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 15 Section 1. Section 30-10-201, MCA, is amended to read: 16 17 "30-10-201. Registration of broker-dealers, salesmen. and investment advisers. (1) It is unlawful for any person 18 19 to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, 20 unless he is registered under parts 1 through 3 of this 21 22 chapter.

23 (2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in 24 25 transactions exempt under 30-10-105, unless the salesman is



registered under parts 1 through 3 of this chapter. 1 (3) It is unlawful for any person to transact business 2 in this state as an investment adviser unless: 3 (a) he is so registered under parts 1 through 3 of 4 5 this chapter: (b) he is registered as a broker-dealer under parts 1 6 7 through 3 of this chapter; or (c) his only clients in this state are investment 8 companies, as defined in the Investment Company Act of 1940. 9 10 or insurance companies. (4) A broker-dealer or a salesman, acting as an agent 3.1 for an issuer or as an agent for a broker-dealer in the 12 offer or sale of securities for an issuer, or an investment 13 adviser may apply for registration by filing with the 14 commissioner an application in such form as the commissioner 15 prescribes and payment of the fee prescribed in 30-10-209. 16 Except for persons in the employ of brokerage firms governed 17 by the regulations of the securities and exchange 18 commission, all salesmen must be legal residents of this 19 state and must have actually resided in this state for a 20 period of at least 1 year next prior to the date of 21 application for registration. The commissioner may, upon 22 request and for good cause shown by an applicant, waive the 23

residency requirement. A salesman acting as agent for an 24 issuer or broker-dealer who is not currently in compliance 25

SECOND READING

1 with the financial responsibility requirements prescribed by 2 the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the 3 4 commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact 5 business in this state. The bond shall be in an amount 6 determined by the commissioner, payable to the state of 7 Montana and conditioned upon the faithful compliance with 8 9 the provisions of parts 1 through 3 of this chapter, and 10 provide that upon failure to so comply, the salesman shall 11 be liable to any and all persons who may suffer loss by 12 reason thereof.

13 (5) The application shall contain whatever information14 the commissioner requires.

(6) When the registration requirements are compliedwith, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 18 following such registration or such other time as the 19 20 commissioner may by rule adopt and may be renewed. The 21 registration of a salesman is not effective during any 22 period when he is not associated with an issuer or a 23 registered broker-dealer specified in his application. When 24 a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or 25

1 broker-dealer shall promptly notify the commissioner.

2 (8) Registration of a broker-dealer, salesman, or з investment adviser may be renewed by filing with the 4 commissioner prior to the expiration thereof an application containing such information as the commissioner may require 5 б to indicate any material change in the information contained in the original application or any renewal application for 7 registration as a broker-dealer, salesman, or investment 8 adviser filed with the commissioner by the applicant, 9 10 payment of the prescribed fee, and, in the case of a broker-dealer, by filing a financial statement showing the 11 12 financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment 13 adviser may file an application for registration of a 14 successor, to become effective upon approval of the 15 16 commissioner.

17 (9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, 18 except with respect to securities exempt under 30-10-104(1). 19 as may be prescribed by the commissioner. All records so 20 required shall be preserved for 3 years unless the 21 22 commissioner prescribes otherwise for particular types of 23 records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to 24 time to such reasonable periodic, special, or other 25

SB 0350702

- 3 -

SB 350

- 4 --

examinations, within or without this state, by
 representatives of the commissioner, as the commissioner
 considers necessary or appropriate in the public interest or
 for the protection of investors.

5 (10) The commissioner may by order deny, suspend, or 6 revoke registration of any broker-dealer, salesman, or 7 investment adviser if he finds that the order is in the 8 public interest and that the applicant or registrant or, in 9 the case of a broker-dealer or investment adviser, any 10 partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to
comply with any provision of parts 1 through 3 of this
chapter or a predecessor law or any rule or order under
parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a
security or any aspect of the securities business or any
felony;

25 (d) is permanently or temporarily enjoined by any

1 court of competent jurisdiction from engaging in or 2 continuing any conduct or practice involving any aspect of 3 the securities business;

4 (e) is the subject of an order of the commissioner 5 denying, suspending, or revoking registration as a 6 broker-dealer, salesman, or investment adviser;

7 (f) is the subject of an order entered within the past 8 5 years by the securities administrator of any other state 9 or by the federal securities and exchange commission denving or revoking registration as a broker-dealer, salesman, or 10 11 investment adviser or the substantial equivalent of those 12 terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and 13 14 exchange commission suspending or expelling him from a national securities exchange or national securities 15 association registered under the Securities Exchange Act of 16 17 1934 or is the subject of a United States post office fraud order, but: 18

(i) the commissioner may not institute a revocation or
suspension proceeding under this subsection (f) more than 1
year from the date of the order relied on; and

(ii) he may not enter any order under this subsection
(f) on the basis of an order unless that order was based on
tacts which would currently constitute a ground for an order
under this section;

-5-

SB 350

-6-

(g) has engaged in dishonest or unethical practices in
 the securities business;

3 (h) is insolvent, either in the sense that his 4 liabilities exceed his assets or in the sense that he cannot 5 meet his obligations as they mature, but the commissioner 6 may not enter an order against a broker-dealer or investment 7 adviser under this subsection (h) without a finding of 8 insolvency as to the broker-dealer or investment adviser;

9 (i) has not complied with a condition imposed by the 10 commissioner under this section or is not qualified on the 11 basis of such factors as training, experience, or knowledge 12 of the securities business; or

13 (j) has failed to pay the proper filing fee, but the 14 commissioner may enter only a denial order under this 15 subsection (j), and he shall vacate any such order when the 16 deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) 17 18 of this section, the commissioner shall promptly notify the 19 applicant or registrant, as well as the employer or 20 prospective employer if the applicant or registrant is a 21 salesman, that it has been entered and of the reasons 22 therefor and that if requested by the applicant or 23 registrant within 15 days after the receipt of the 24 commissioner's notification the matter will be promptly set 25 down for hearing. If no hearing is requested within 15 days

and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

6 (12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has 7 8 ceased to do business as a broker-dealer, investment 9 adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, 10 conservator, or quardian or cannot be located after 11 reasonable search, the commissioner may by order cancel the 12 registration or application. 13 14 (13) The commissioner may, after suspending or revoking

15 registration of any broker-dealer, salesman, or investment adviser under subsection (10), impose a fine not to exceed 16 \$5,000 upon such broker-dealer, salesman, or investment 17 adviser. The fine is in addition to all other penalties 18 imposed by the laws of this state and must be collected by 19 the commissioner in the name of the state of Montana and 20 deposited in the general fund. Imposition of any fine under 21 this subsection is an order from which an appeal may be 22 taken pursuant to 30-10-308. If any broker-dealer, salesman, 23 or investment adviser fails to pay a fine referred to in 24 this subsection, the amount of the fine is a first lien upon 25

-7-

-8-

SB 35.

all of the assets and property of such broker-dealer, 1 salesman, or investment adviser in this state and may be 2 recovered by suit by the commissioner and deposited in the 3 general fund. Failure of a broker-dealer, salesman, or 4 investment adviser to pay a fine also constitutes a 5 6 forfeiture of his right to do business in this state under parts 1 through 3 of this chapter." 7 Section 2. Section 30-10-305, MCA, is amended to read: 8 "30-10-305. Injunctions and other remedies. (1) 9 Whenever it appears to the commissioner that any person has 10 11 engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 12 3 of this chapter or any rule or order hereunder, he may in 13 14 his discretion: (a) issue an order directing the person to cease and 15 16 desist from continuing the act or practice after reasonable 17 notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in 18 19 effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does 20 not request a hearing within 15 days after receipt of the 21 notice; or 22

(b) without the issuance of a cease and desist order,
bring an action in any court of competent jurisdiction to
enjoin any such acts or practices and to enforce compliance

-9-

SB 350

with parts 1 through 3 of this chapter or any rule or order 1 hereunder. Upon a proper showing, a permanent or temporary 2 3 injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for 4 S the defendant or the defendant's assets. The commissioner 6 may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as 7 8 fixed by the court.

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

15 (3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, 16 impose a fine not to exceed \$5,000 per violation upon a 17 18 person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 19 20 3 of this chapter or any rule or order issued under parts 1 21 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must 22 23 be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any 24 25 fine under this subsection is an order from which an appeal

-10-

SB 0350/02

1 may be taken pursuant to 30-10-308. If any person fails to 2 pay a fine referred to in this subsection, the amount of the З fine is a first lien upon all of the assets and property of 4 such person in this state and may be recovered by suit by 5 the commissioner and deposited in the general fund. Failure 6 of the person to pay a fine also constitutes a forfeiture of 7 his right to do business in this state under parts 1 through 8 3 of this chapter." NEW SECTION. Section 3. Extension of authority. Any 9 existing authority of the securities commissioner to make 10 11 rules on the subject of the provisions of this act is 12 extended to the provisions of this act.

13 <u>NEW SECTION.</u> Section 4. Effective date. This act is
14 effective on passage and approval.

-End-

| 1  | SENATE BILL NO. 350  | 1  | regis  |
|----|--|----|--------|
| 2  | INTRODUCED BY CRIPPEN, KEYSER                                | 2  |        |
| 3  | BY REQUEST OF THE SECURITIES DIVISION OF THE                 | 3  | in th  |
| 4  | STATE AUDITOR'S OFFICE                                       | 4  |        |
| 5  |  | 5  | this   |
| 6  | A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE        | 6  |        |
| 7  | IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A    | 7  | throu  |
| 8  | FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED | 8  |        |
| 9  | OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A     | 9  | compa  |
| 10 | BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING    | 10 | or in  |
| 11 | SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS   | 11 |        |
| 12 | 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE     | 12 | for a  |
| 13 | EFFECTIVE DATE."   | 13 | offer  |
| 14 |  | 14 | advis  |
| 15 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:    | 15 | commi  |
| 16 | Section 1. Section 30-10-201, MCA, is amended to read:       | 16 | presc  |
| 17 | "30-10-201. Registration of broker-dealers, salesmen,        | 17 | Excep  |
| 18 | and investment advisers. (1) It is unlawful for any person   | 18 | by ti  |
| 19 | to transact business in this state as a broker-dealer or     | 19 | commis |
| 20 | salesman, except in transactions exempt under 30-10-105,     | 20 | state  |
| 21 | unless he is registered under parts 1 through 3 of this      | 21 | period |
| 22 | chapter.   | 22 | applic |
| 23 | (2) It is unlawful for a broker-dealer or issuer to          | 23 | reques |
| 24 | employ a salesman to represent him in this state, except in  | 24 | reside |
| 25 | transactions event under 30-10-105, unless the salesman is   | 25 | issuer |

Montana Legislative Council

stered under parts 1 through 3 of this chapter. (3) It is unlawful for any person to transact business his state as an investment adviser unless: (a) he is so registered under parts 1 through 3 of chapter; (b) he is registered as a broker-dealer under parts 1 igh 3 of this chapter; or (c) his only clients in this state are investment anies, as defined in the Investment Company Act of 1940, surance companies. (4) A broker-dealer or a salesman, acting as an agent an issuer or as an agent for a broker-dealer in the or sale of securities for an issuer, or an investment er may apply for registration by filing with the ssioner an application in such form as the commissioner ribes and payment of the fee prescribed in 30-10-209. ot for persons in the employ of brokerage firms governed he regulations of the securities and exchange ssion, all salesmen must be legal residents of this and must have actually resided in this state for a od of at least 1 year next prior to the date of cation for registration. The commissioner may, upon est and for good cause shown by an applicant, waive the ency requirement. A salesman acting as agent for an er or broker-dealer who is not currently in compliance THIRD READING -2-

with the financial responsibility requirements prescribed by 1 2 the Securities Exchange Act of 1934 and by regulations З adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a 4 bond of a surety company duly authorized to transact 5 business in this state. The bond shall be in an amount 6 determined by the commissioner, payable to the state of 7 Montana and conditioned upon the faithful compliance with 6 9 the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall 10 be liable to any and all persons who may suffer loss by 11 reason thereof. 12

13 (5) The application shall contain whatever information14 the commissioner requires.

15 (6) When the registration requirements are complied16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 18 following such registration or such other time as the 19 commissioner may by rule adopt and may be renewed. The 20 registration of a salesman is not effective during any 21 22 period when he is not associated with an issuer or a registered broker-dealer specified in his application. When 23 24 a salesman begins or terminates a connection with an issuer 25 or registered broker-dealer, the salesman and the issuer or 1 broker-dealer shall promptly notify the commissioner.

2 (8) Registration of a broker-dealer, salesman, or 3 investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application 4 5 containing such information as the commissioner may require to indicate any material change in the information contained 6 7 in the original application or any renewal application for я registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, 9 10 payment of the prescribed fee, and, in the case of a 11 broker-dealer, by filing a financial statement showing the 12 financial condition of such broker-dealer as of a date 13 within 90 days. A registered broker-dealer or investment 14 adviser may file an application for registration of a 15 successor, to become effective upon approval of the 16 commissioner.

17 (9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, 18 19 except with respect to securities exempt under 30-10-104(1). 20 as may be prescribed by the commissioner. All records so 21 required shall be preserved for 3 years unless the 22 commissioner prescribes otherwise for particular types of 23 records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to 24 25 time to such reasonable periodic, special, or other

- 4 +

-3-

SB 350

SB 350

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examinations, within or without this state, by
 representatives of the commissioner, as the commissioner
 considers necessary or appropriate in the public interest or
 for the protection of investors.

5 (10) The commissioner may by order deny, suspend, or 6 revoke registration of any broker-dealer, salesman, or 7 investment adviser if he finds that the order is in the 8 public interest and that the applicant or registrant or, in 9 the case of a broker-dealer or investment adviser, any 10 partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to
comply with any provision of parts 1 through 3 of this
chapter or a predecessor law or any rule or order under
parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a
security or any aspect of the securities business or any
felony;

25 (d) is permanently or temporarily enjoined by any

-5-

court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

4 (e) is the subject of an order of the commissioner 5 denying, suspending, or revoking registration as a 6 broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 7 5 years by the securities administrator of any other state 8 or by the federal securities and exchange commission denying 9 or revoking registration as a broker-dealer, salesman, or 10 11 investment adviser or the substantial equivalent of those 12 terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and 13 exchange commission suspending or expelling him from a 14 national securities exchange or national securities 15 association registered under the Securities Exchange Act of 16 17 1934 or is the subject of a United States post office fraud 18 order, but:

(i) the commissioner may not institute a revocation or
suspension proceeding under this subsection (f) more than 1
year from the date of the order relied on; and
(ii) he may not enter any order under this subsection

23 (f) on the basis of an order unless that order was based on
24 facts which would currently constitute a ground for an order
25 under this section;

-6-

(g) has engaged in dishonest or unethical practices in
 the securities business;

3 (h) is insolvent, either in the sense that his 4 liabilities exceed his assets or in the sense that he cannot 5 meet his obligations as they mature, but the commissioner 6 may not enter an order against a broker-dealer or investment 7 adviser under this subsection (h) without a finding of 8 insolvency as to the broker-dealer or investment adviser;

9 (i) has not complied with a condition imposed by the 10 commissioner under this section or is not qualified on the 11 basis of such factors as training, experience, or knowledge 12 of the securities business; or

(j) has failed to pay the proper filing fee, but the
commissioner may enter only a denial order under this
subsection (j), and he shall vacate any such order when the
deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the 18 applicant or registrant, as well as the employer or 19 20 prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons 21 22 therefor and that if requested by the applicant or registrant within 15 days after the receipt of the 23 commissioner's notification the matter will be promptly set 24 25 down for hearing. If no hearing is requested within 15 days

1 and none is ordered by the commissioner, the order will 2 remain in effect until it is modified or vacated by the 3 commissioner. If a hearing is requested or ordered, the 4 commissioner, after notice of and opportunity for hearing, 5 may affirm, modify, or vacate the order.

6 (12) If the commissioner finds that any registrant or 7 applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment 8 . 9 adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, 10 11 conservator, or quardian or cannot be located after 12 reasonable search, the commissioner may by order cancel the 13 registration or application.

| 14 | (13) The commissioner may, after suspending or revoking      |
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| 15 | registration of any broker-dealer, salesman, or investment   |
| 16 | adviser under subsection (10), impose a fine not to exceed   |
| 17 | \$5,000 upon such broker-dealer, salesman, or investment     |
| 18 | adviser. The fine is in addition to all other penalties      |
| 19 | imposed by the laws of this state and must be collected by   |
| 20 | the commissioner in the name of the state of Montana and     |
| 21 | deposited in the general fund. Imposition of any fine under  |
| 22 | this subsection is an order from which an appeal may be      |
| 23 | taken pursuant to 30-10-308. If any broker-dealer, salesman, |
| 24 | or investment adviser fails to pay a fine referred to in     |
| 25 | this subsection, the amount of the fine is a first lien upon |

-7-

-8-

| 1  | all of the assets and property of such broker-dealer,        |
|----|--|
| 2  | salesman, or investment adviser in this state and may be     |
| 3  | recovered by suit by the commissioner and deposited in the   |
| 4  | general fund. Failure of a broker-dealer, salesman, or       |
| 5  | investment adviser to pay a fine also constitutes a          |
| 6  | forfeiture of his right to do business in this state under   |
| 7  | parts 1 through 3 of this chapter."                          |
| 8  | Section 2. Section 30-10-305, MCA, is amended to read:       |
| 9  | "30-10-305. Injunctions and other remedies. (1)              |
| 10 | Whenever it appears to the commissioner that any person has  |
| 11 | engaged or is about to engage in any act or practice         |
| 12 | constituting a violation of any provision of parts 1 through |
| 13 | 3 of this chapter or any rule or order hereunder, he may in  |
| 14 | his discretion:  |
| 15 | (a) issue an order directing the person to cease and         |
| 16 | desist from continuing the act or practice after reasonable  |
| 17 | notice and opportunity for a hearing. The commissioner may   |
| 18 | issue a temporary order pending the hearing that remains in  |
| 19 | effect until 10 days after any hearing is held or that       |
| 20 | becomes final if the person to whom notice is addressed does |

21 not request a hearing within 15 days after receipt of the 22 notice; or

(b) without the issuance of a cease and desist order,
bring an action in any court of competent jurisdiction to
enjoin any such acts or practices and to enforce compliance

-9-

SB 350

1 with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary 2 injunction, restraining order, or writ of mandamus shall be 3 granted and a receiver or conservator may be appointed for 4 5 the defendant or the defendant's assets. The commissioner 6 may not be required to post a bond. If the commissioner 7 prevails, he is entitled to reasonable attorneys' fees as fixed by the court. 8

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

| 15 | (3) The commissioner may, after giving reasonable            |
|----|--|
| 16 | notice and an opportunity for a hearing under this section,  |
| 17 | impose a fine not to exceed \$5,000 per violation upon a     |
| 18 | person found to have engaged in any act or practice          |
| 19 | constituting a violation of any provision of parts 1 through |
| 20 | 3 of this chapter or any rule or order issued under parts 1  |
| 21 | through 3 of this chapter. The fine is in addition to all    |
| 22 | other penalties imposed by the laws of this state and must   |
| 23 | be collected by the commissioner in the name of the state of |
| 24 | Montana and deposited in the general fund. Imposition of any |
| 25 | fine under this subsection is an order from which an appeal  |
|    |  |

-10-

SB 350

1 may be taken pursuant to 30-10-308. If any person fails to 2 pay a fine referred to in this subsection, the amount of the fine is a first ligh upon all of the assets and property of 3 such person in this state and may be recovered by suit by 4 the commissioner and deposited in the general fund. Failure 5 of the person to pay a fine also constitutes a forfeiture of 6 his right to do business in this state under parts 1 through 7 3 of this chapter." 8 9 NEW SECTION. Section 3. Extension of authority. Any existing authority of the securities commissioner to make 10

11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 <u>NEW SECTION.</u> Section 4. Effective date. This act is
14 effective on passage and approval.

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| 1 | SENATE BILL NO. 350                          |
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| 2 | INTRODUCED BY CRIPPEN, KEYSER                |
| 3 | BY REQUEST OF THE SECURITIES DIVISION OF THE |
| 4 | STATE AUDITOR'S OFFICE                       |

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE 6 IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A 7 FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED 8 OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A 9 BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING 10 SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS 11 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE 12 EFFECTIVE DATE." 13

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

16 Section 1. Section 30-10-201, MCA, is amended to read: 17 "30-10-201. Registration of broker-dealers, salesmen, 18 and investment advisers. (1) It is unlawful for any person 19 to transact business in this state as a broker-dealer or 20 salesman, except in transactions exempt under 30-10-105, 21 unless he is registered under parts 1 through 3 of this 22 chapter.

(2) It is unlawful for a broker-dealer or issuer to
employ a salesman to represent him in this state, except in
transactions exempt under 30-10-105, unless the salesman is

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1 registered under parts 1 through 3 of this chapter. 2 (3) It is unlawful for any person to transact business 3 in this state as an investment adviser unless: .4 (a) he is so registered under parts 1 through 3 of 5 this chapter; 6 (b) he is registered as a broker-dealer under parts 1 7 through 3 of this chapter; or (c) his only clients in this state are investment 8 9 companies, as defined in the Investment Company Act of 1940. 10 or insurance companies. (4) A broker-dealer or a salesman, acting as an agent 11 for an issuer or as an agent for a broker-dealer in the 12 offer or sale of securities for an issuer, or an investment 13 adviser may apply for registration by filing with the 14 commissioner an application in such form as the commissioner 15 prescribes and payment of the fee prescribed in 30-10-209. 16 Except for persons in the employ of brokerage firms governed 17 by the regulations of the securities and exchange 18 commission, all salesmen must be legal residents of this 19 state and must have actually resided in this state for a 20 period of at least 1 year next prior to the date of 21 application for registration. The commissioner may, upon 22 request and for good cause shown by an applicant, waive the 23 residency requirement. A salesman acting as agent for an 24 issuer or broker-dealer who is not currently in compliance 25 REFERENCE BILL -2-58 350

1 with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations 2 3 adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a 4 5 bond of a surety company duly authorized to transact 6 business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of 7 Montana and conditioned upon the faithful compliance with 8 9 the provisions of parts 1 through 3 of this chapter, and 10 provide that upon failure to so comply, the salesman shall 11 be liable to any and all persons who may suffer loss by 12 reason thereof.

13 (5) The application shall contain whatever information14 the commissioner requires.

15 (6) When the registration requirements are complied16 with, the commissioner shall approve the registration.

17 (7) Registration of a broker-dealer, salesman, or 18 investment adviser shall be effective until December 31 19 following such registration or such other time as the 20 commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any 21 22 period when he is not associated with an issuer or a 23 registered broker-dealer specified in his application. When 24 a salesman begins or terminates a connection with an issuer 25 or registered broker-dealer, the salesman and the issuer or 1 broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or 2 investment adviser may be renewed by filing with the 3 commissioner prior to the expiration thereof an application 4 containing such information as the commissioner may require 5 to indicate any material change in the information contained б in the original application or any renewal application for 7 registration as a broker-dealer, salesman, or investment 8 adviser filed with the commissioner by the applicant, 9 payment of the prescribed fee, and, in the case of a 10 broker-dealer, by filing a financial statement showing the 11 financial condition of such broker-dealer as of a date 12 within 90 days. A registered broker-dealer or investment 13 adviser may file an application for registration of a 14 successor, to become effective upon approval of the 15 commissioner. 16

(9) Every registered broker-dealer and investment 17 adviser shall make and keep such accounts and other records, 18 except with respect to securities exempt under 30-10-104(1), 19 as may be prescribed by the commissioner. All records so 20 required shall be preserved for 3 years unless the 21 commissioner prescribes otherwise for particular types of 22 records. All the records of a registered broker-dealer or 23 investment adviser are subject at any time or from time to 24 time to such reasonable periodic, special, or other 25

-3-

SB 0350/02

-4-

SB 350

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examinations, within or without this state, by
 representatives of the commissioner, as the commissioner
 considers necessary or appropriate in the public interest or
 for the protection of investors.

5 (10) The commissioner may by order deny, suspend, or 6 revoke registration of any broker-dealer, salesman, or 7 investment adviser if he finds that the order is in the 8 public interest and that the applicant or registrant or, in 9 the case of a broker-dealer or investment adviser, any 10 partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to
comply with any provision of parts 1 through 3 of this
chapter or a predecessor law or any rule or order under
parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a
security or any aspect of the securities business or any
felony;

25 (d) is permanently or temporarily enjoined by any

-5-

court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

4 (e) is the subject of an order of the commissioner
5 denying, suspending, or revoking registration as a
6 broker-dealer, salesman, or investment adviser;

7 (f) is the subject of an order entered within the past 8 5 years by the securities administrator of any other state 9 or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or 10 investment adviser or the substantial equivalent of those 11 terms as defined in parts 1 through 3 of this chapter or is 12 the subject of an order of the federal securities and 13 exchange commission suspending or expelling him from a 14 15 national securities exchange or national securities association registered under the Securities Exchange Act of 16 17 1934 or is the subject of a United States post office fraud order, but: 18

(i) the commissioner may not institute a revocation or
suspension proceeding under this subsection (f) more than 1
year from the date of the order relied on; and

(ii) he may not enter any order under this subsection
(f) on the basis of an order unless that order was based on
facts which would currently constitute a ground for an order
under this section;

-6-

(g) has engaged in dishonest or unethical practices in
 the securities business;

3 (h) is insolvent, either in the sense that his 4 liabilities exceed his assets or in the sense that he cannot 5 meet his obligations as they mature, but the commissioner 6 may not enter an order against a broker-dealer or investment 7 adviser under this subsection (h) without a finding of 8 insolvency as to the broker-dealer or investment adviser;

9 (i) has not complied with a condition imposed by the 10 commissioner under this section or is not qualified on the 11 basis of such factors as training, experience, or knowledge 12 of the securities business; or

(j) has failed to pay the proper filing fee, but the
commissioner may enter only a denial order under this
subsection (j), and he shall vacate any such order when the
deficiency has been corrected.

17 (11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the 18 applicant or registrant, as well as the employer or 19 prospective employer if the applicant or registrant is a 20 salesman, that it has been entered and of the reasons 21 therefor and that if requested by the applicant or 22 registrant within, 15 days after the receipt of the 23 commissioner's notification the matter will be promptly set 24 25 down for hearing. If no hearing is requested within 15 days

and none is ordered by the commissioner, the order will
 remain in effect until it is modified or vacated by the
 commissioner. If a hearing is requested or ordered, the
 commissioner, after notice of and opportunity for hearing,
 may affirm, modify, or vacate the order.

б (12) If the commissioner finds that any registrant or 7 applicant for registration is no longer in existence or has 8 ceased to do business as a broker-dealer, investment 9 adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, 10 conservator, or guardian or cannot be located after 11 reasonable search, the commissioner may by order cancel the 12 13 registration or application.

(13) The commissioner may, after suspending or revoking 14 15 registration of any broker-dealer, salesman, or investment adviser under subsection (10), impose a fine not to exceed 16 \$5,000 upon such broker-dealer, salesman, or investment 17 18 adviser. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by 19 the commissioner in the name of the state of Montana and 20 deposited in the general fund. Imposition of any fine under 21 22 this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, 23 or investment adviser fails to pay a fine referred to in 24 this subsection, the amount of the fine is a first lien upon 25

-7-

SB 350

-8-

all of the assets and property of such broker-dealer, 1 salesman, or investment adviser in this state and may be 2 3 recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, or 4 investment adviser to pay a fine also constitutes a 5 forfeiture of his right to do business in this state under 6 parts 1 through 3 of this chapter." 7 Section 2. Section 30-10-305, MCA, is amended to read: 8 9 "30-10-305. Injunctions and other remedies. (1) 10 Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice 11 constituting a violation of any provision of parts 1 through 12 3 of this chapter or any rule or order hereunder, he may in 13 his discretion: 14 (a) issue an order directing the person to cease and 15 desist from continuing the act or practice after reasonable 16 notice and opportunity for a hearing. The commissioner may 17

18 issue a temporary order pending the hearing that remains in 19 effect until 10 days after any hearing is held or that 20 becomes final if the person to whom notice is addressed does 21 not request a hearing within 15 days after receipt of the 22 notice; or

(b) without the issuance of a cease and desist order,
bring an action in any court of competent jurisdiction to
enjoin any such acts or practices and to enforce compliance

1 with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary 2 injunction, restraining order, or writ of mandamus shall be 3 granted and a receiver or conservator may be appointed for 4 the defendant or the defendant's assets. The commissioner 5 6 may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as 7 я fixed by the court.

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

(3) The commissioner may, after giving reasonable 15 notice and an opportunity for a hearing under this section, 16 impose a fine not to exceed \$5,000 per violation upon a 17 person found to have engaged in any act or practice 18 constituting a violation of any provision of parts 1 through 19 3 of this chapter or any rule or order issued under parts 1 20 through 3 of this chapter. The fine is in addition to all 21 other penalties imposed by the laws of this state and must 22 be collected by the commissioner in the name of the state of 23 Montana and deposited in the general fund. Imposition of any 24 25 fine under this subsection is an order from which an appeal

-9-

1 may be taken pursuant to 30+10-308. If any person fails to 2 pay a fine referred to in this subsection, the amount of the 3 fine is a first lien upon all of the assets and property of 4 such person in this state and may be recovered by suit by 5 the commissioner and deposited in the general fund. Failure 6 of the person to pay a fine also constitutes a forfeiture of 7 his right to do business in this state under parts 1 through 8 3 of this chapter." 9 NEW SECTION. Section 3. Extension of authority. Any

10 existing authority of the securities commissioner to make 11 rules on the subject of the provisions of this act is 12 extended to the provisions of this act.

13 <u>NEW SECTION.</u> Section 4. Effective date. This act is
14 effective on passage and approval.

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-11-