

SENATE BILL NO. 299

INTRODUCED BY MEYER, WALLIN

BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

IN THE SENATE

FEBRUARY 5, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

FEBRUARY 18, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 19, 1987 PRINTING REPORT.

FEBRUARY 20, 1987 SECOND READING, DO PASS.

FEBRUARY 21, 1987 ENGROSSING REPORT.

FEBRUARY 23, 1987 THIRD READING, PASSED.
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 17, 1987 SECOND READING, CONCURRED IN.

MARCH 18, 1987 THIRD READING, CONCURRED IN.
AYES, 93; NOES, 1.

RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1987 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 *Senate* BILL NO. *299*
 2 INTRODUCED BY *Meyer Wallin*
 3 BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE THE
 6 STATUTE OF LIMITATIONS FOR CIVIL AND ADMINISTRATIVE ACTIONS
 7 BROUGHT PURSUANT TO THE SECURITIES ACT OF MONTANA; AMENDING
 8 SECTIONS 30-10-305 AND 30-10-307, MCA; AND PROVIDING A
 9 RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
 10 DATE."

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

13 Section 1. Section 30-10-305, MCA, is amended to read:

14 "30-10-305. Injunctions and other remedies --
 15 limitations on actions. (1) ~~Whenever~~ If it appears to the
 16 commissioner that any person has engaged or is about to
 17 engage in any act or practice constituting a violation of
 18 any provision of parts 1 through 3 of this chapter or any
 19 rule or order hereunder, he may in his discretion:

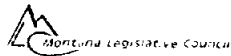
20 (a) issue an order directing the person to cease and
 21 desist from continuing the act or practice after reasonable
 22 notice and opportunity for a hearing. The commissioner may
 23 issue a temporary order pending the hearing that remains in
 24 effect until 10 days after the hearing on the allegations
 25 contained in the cease and desist order is held or that

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

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

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

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



3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) No administrative or civil action may be maintained by the commissioner under this section to enforce any liability founded on a violation of 30-10-201 through 30-10-205 unless it is brought within 2 years after the violation occurs.

(b) No administrative or civil action may be maintained by the commissioner under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder, except 30-10-201 through 30-10-205, unless it is brought within 2 years after discovery by the commissioner or his staff of

the facts constituting the violation.

(c) In no event may an action be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder unless it is brought within 5 years after the transaction on which the action is based."

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

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

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

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

(2) Every person who directly or indirectly controls a

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

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

16 (a) if the buyer has received a written offer, at a
 17 time when he owned the security, to refund the consideration
 18 paid, together with interest at 10% per annum from the date
 19 of payment, less the amount of any income received on the
 20 security and he failed to accept the offer within 30 days of
 21 its receipt; or

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

1 (i) the value of the security when the buyer disposed
 2 of it; and

3 (ii) interest at 10% per annum from the date of
 4 disposition.

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

16 (5) (a) No action may be maintained under this section
 17 to enforce any liability founded on a violation of 30-10-202
 18 unless it is brought within 2 years after the violation
 19 occurs.

20 (b) No action may be maintained under this section to
 21 enforce any liability founded on fraud or misrepresentation
 22 unless it is brought within 2 years after discovery of the
 23 fraud or misrepresentation on which the liability is founded
 24 or after such discovery should have been made by the
 25 exercise of reasonable diligence.

1 (c) In no event may an action be maintained under this
2 section to enforce any liability founded on fraud or
3 misrepresentation unless it is brought within 5 years after
4 the transaction on which the action is based."

5 NEW SECTION. Section 3. Extension of authority. Any
6 existing authority of the securities commissioner to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 4. Applicability. Sections 1 and
10 2 apply retroactively, within the meaning of 1-2-109, to a
11 securities transaction occurring prior to the effective date
12 of this act for which no action has been commenced within
13 year from the effective date of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 299

INTRODUCED BY MEYER, WALLIN

BY REQUEST OF THE STATE AUDITOR AND SECURITIES COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE THE
STATUTE OF LIMITATIONS FOR CIVIL AND ADMINISTRATIVE ACTIONS
BROUGHT PURSUANT TO THE SECURITIES ACT OF MONTANA; AMENDING
SECTIONS 30-10-305 AND 30-10-307, MCA; AND PROVIDING A
RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
DATE."

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

Section 1. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies --
limitations on actions. (1) Whenever if it appears to the
commissioner that any person has engaged or is about to
engage in any act or practice constituting a violation of
any provision of parts 1 through 3 of this chapter or any
rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and
desist from continuing the act or practice after reasonable
notice and opportunity for a hearing. The commissioner may
issue a temporary order pending the hearing that remains in
effect until 10 days after the hearing on the allegations
contained in the cease and desist order is held or that

becomes final if the person to whom notice is addressed does
not request a hearing within 15 days after receipt of the
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
hereunder. Upon a proper showing, a permanent or temporary
injunction, restraining order, or writ of mandamus shall be
granted and a receiver or conservator may be appointed for
the defendant or the defendant's assets. The commissioner
may not be required to post a bond. If the commissioner
prevails, he is entitled to reasonable attorneys' fees as
fixed by the court.

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

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



1 3 of this chapter or any rule or order issued under parts 1
 2 through 3 of this chapter. The fine is in addition to all
 3 other penalties imposed by the laws of this state and must
 4 be collected by the commissioner in the name of the state of
 5 Montana and deposited in the general fund. Imposition of any
 6 fine under this subsection is an order from which an appeal
 7 may be taken pursuant to 30-10-308. If any person fails to
 8 pay a fine referred to in this subsection, the amount of the
 9 fine is a lien upon all of the assets and property of such
 10 person in this state and may be recovered by suit by the
 11 commissioner and deposited in the general fund. Failure of
 12 the person to pay a fine also constitutes a forfeiture of
 13 his right to do business in this state under parts 1 through
 14 3 of this chapter.

15 (4) (a) No administrative or civil action may be
 16 maintained by the commissioner under this section to enforce
 17 any liability founded on a violation of 30-10-201 through
 18 30-10-205 unless it is brought within 2 years after the
 19 violation occurs.

20 (b) No administrative or civil action may be
 21 maintained by the commissioner under this section to enforce
 22 any liability founded on a violation of parts 1 through 3 of
 23 this chapter or any rule or order issued thereunder, except
 24 30-10-201 through 30-10-205, unless it is brought within 2
 25 years after discovery by the commissioner or his staff of

1 the facts constituting the violation.

2 (c) In no event may an action be maintained under this
 3 section to enforce any liability founded on a violation of
 4 parts 1 through 3 of this chapter or any rule or order
 5 issued thereunder unless it is brought within 5 years after
 6 the transaction on which the action is based."

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

8 "30-10-307. Civil liabilities -- limitations on
 9 actions. (1) Any person who offers or sells a security in
 10 violation of any provisions of 30-10-202 through 30-10-205
 11 or offers or sells a security by means of fraud or
 12 misrepresentation is liable to the person buying the
 13 security from him, who may sue either at law or in equity to
 14 recover the consideration paid for the security, together
 15 with interest at 10% per annum from the date of payment,
 16 costs, and reasonable attorneys' fees, less the amount of
 17 any income received on the security, upon the tender of the
 18 security, or for damages if he no longer owns the security.
 19 Damages are the amount that would be recoverable upon a
 20 tender less:

21 (a) the value of the security when the buyer disposed
 22 of it; and

23 (b) interest at 10% per annum from the date of
 24 disposition.

25 (2) Every person who directly or indirectly controls a

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

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

16 (a) if the buyer has received a written offer, at a
 17 time when he owned the security, to refund the consideration
 18 paid, together with interest at 10% per annum from the date
 19 of payment, less the amount of any income received on the
 20 security and he failed to accept the offer within 30 days of
 21 its receipt; or

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

1 (i) the value of the security when the buyer disposed
 2 of it; and

3 (ii) interest at 10% per annum from the date of
 4 disposition.

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

16 (5) (a) No action may be maintained under this section
 17 to enforce any liability founded on a violation of 30-10-202
 18 unless it is brought within 2 years after the violation
 19 occurs.

20 (b) No action may be maintained under this section to
 21 enforce any liability founded on fraud or misrepresentation
 22 unless it is brought within 2 years after discovery of the
 23 fraud or misrepresentation on which the liability is founded
 24 or after such discovery should have been made by the
 25 exercise of reasonable diligence.

1 (c) In no event may an action be maintained under this
2 section to enforce any liability founded on fraud or
3 misrepresentation unless it is brought within 5 years after
4 the transaction on which the action is based."

5 NEW SECTION. Section 3. Extension of authority. Any
6 existing authority of the securities commissioner to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

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10 2 apply retroactively, within the meaning of 1-2-109, to a
11 securities transaction occurring prior to the effective date
12 of this act for which no action has been commenced within 1
13 year from the effective date of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

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13 Section 1. Section 30-10-305, MCA, is amended to read:

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17 engage in any act or practice constituting a violation of
18 any provision of parts 1 through 3 of this chapter or any
19 rule or order hereunder, he may in his discretion:

20 (a) issue an order directing the person to cease and
21 desist from continuing the act or practice after reasonable
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24 effect until 10 days after the hearing on the allegations
25 contained in the cease and desist order is held or that

1 becomes final if the person to whom notice is addressed does
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4 (b) without the issuance of a cease and desist order,
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9 injunction, restraining order, or writ of mandamus shall be
10 granted and a receiver or conservator may be appointed for
11 the defendant or the defendant's assets. The commissioner
12 may not be required to post a bond. If the commissioner
13 prevails, he is entitled to reasonable attorneys' fees as
14 fixed by the court.

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

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

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 2 through 3 of this chapter. The fine is in addition to all
 3 other penalties imposed by the laws of this state and must
 4 be collected by the commissioner in the name of the state of
 5 Montana and deposited in the general fund. Imposition of any
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 7 may be taken pursuant to 30-10-308. If any person fails to
 8 pay a fine referred to in this subsection, the amount of the
 9 fine is a lien upon all of the assets and property of such
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 25 years after discovery by the commissioner or his staff of

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10 granted and a receiver or conservator may be appointed for
11 the defendant or the defendant's assets. The commissioner
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18 such violation, other than a consent judgment or decree
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20 person in an action brought against him under 30-10-307.

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22 notice and an opportunity for a hearing under this section,
23 impose a fine not to exceed \$5,000 per violation upon a
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1 3 of this chapter or any rule or order issued under parts 1
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 3 other penalties imposed by the laws of this state and must
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 13 his right to do business in this state under parts 1 through
 14 3 of this chapter.

15 (4) (a) No administrative or civil action may be
 16 maintained by the commissioner under this section to enforce
 17 any liability founded on a violation of 30-10-201 through
 18 30-10-205 unless it is brought within 2 years after the
 19 violation occurs.

20 (b) No administrative or civil action may be
 21 maintained by the commissioner under this section to enforce
 22 any liability founded on a violation of parts 1 through 3 of
 23 this chapter or any rule or order issued thereunder, except
 24 30-10-201 through 30-10-205, unless it is brought within 2
 25 years after discovery by the commissioner or his staff of

1 the facts constituting the violation.

2 (c) In no event may an action be maintained under this
 3 section to enforce any liability founded on a violation of
 4 parts 1 through 3 of this chapter or any rule or order
 5 issued thereunder unless it is brought within 5 years after
 6 the transaction on which the action is based."

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

8 "30-10-307. Civil liabilities -- limitations on
 9 actions. (1) Any person who offers or sells a security in
 10 violation of any provisions of 30-10-202 through 30-10-205
 11 or offers or sells a security by means of fraud or
 12 misrepresentation is liable to the person buying the
 13 security from him, who may sue either at law or in equity to
 14 recover the consideration paid for the security, together
 15 with interest at 10% per annum from the date of payment,
 16 costs, and reasonable attorneys' fees, less the amount of
 17 any income received on the security, upon the tender of the
 18 security, or for damages if he no longer owns the security.
 19 Damages are the amount that would be recoverable upon a
 20 tender less:

21 (a) the value of the security when the buyer disposed
 22 of it; and

23 (b) interest at 10% per annum from the date of
 24 disposition.

25 (2) Every person who directly or indirectly controls a

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

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

16 (a) if the buyer has received a written offer, at a
 17 time when he owned the security, to refund the consideration
 18 paid, together with interest at 10% per annum from the date
 19 of payment, less the amount of any income received on the
 20 security and he failed to accept the offer within 30 days of
 21 its receipt; or

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

1 (i) the value of the security when the buyer disposed
 2 of it; and

3 (ii) interest at 10% per annum from the date of
 4 disposition.

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

16 (5) (a) No action may be maintained under this section
 17 to enforce any liability founded on a violation of 30-10-202
 18 unless it is brought within 2 years after the violation
 19 occurs.

20 (b) No action may be maintained under this section to
 21 enforce any liability founded on fraud or misrepresentation
 22 unless it is brought within 2 years after discovery of the
 23 fraud or misrepresentation on which the liability is founded
 24 or after such discovery should have been made by the
 25 exercise of reasonable diligence.

1 (c) In no event may an action be maintained under this
2 section to enforce any liability founded on fraud or
3 misrepresentation unless it is brought within 5 years after
4 the transaction on which the action is based."

5 NEW SECTION. Section 3. Extension of authority. Any
6 existing authority of the securities commissioner to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 4. Applicability. Sections 1 and
10 2 apply retroactively, within the meaning of 1-2-109, to a
11 securities transaction occurring prior to the effective date
12 of this act for which no action has been commenced within 1
13 year from the effective date of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

-End-