

SENATE BILL NO. 357

INTRODUCED BY DOHERTY, TUSS

IN THE SENATE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
APRIL 6, 1993	ON MOTION, RULES SUSPENDED TO PLACE ON 2ND AND 3RD READING SAME LEGISLATIVE DAY.
APRIL 13, 1993	ON MOTION, TAKEN FROM COMMITTEE PRINTED AND PLACED ON 2ND READING.
APRIL 14, 1993	SECOND READING, CONCURRED IN.
	THIRD READING, CONCURRED IN. AYES, 81; NOES, 18.
	RETURNED TO SENATE.

IN THE SENATE

APRIL 15, 1993	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 357
 2 INTRODUCED BY Doherty Tenn
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE RIGHT OF A
 5 WITNESS IN A PROCEEDING BEFORE THE SECURITIES COMMISSIONER
 6 TO CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION IN ORDER
 7 TO EXCLUDE THE USE OF THE TESTIMONY IN ANY CRIMINAL CASE;
 8 REVISING THE DURATION OF A TEMPORARY ORDER ISSUED BY THE
 9 COMMISSIONER PRIOR TO A HEARING ON AN ALLEGED VIOLATION OF
 10 STATE SECURITIES LAW; AMENDING SECTIONS 30-10-304 AND
 11 30-10-305, MCA; AND PROVIDING AN EFFECTIVE DATE."
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 **Section 1.** Section 30-10-304, MCA, is amended to read:
 15 "30-10-304. Investigations and subpoenas. (1) The
 16 commissioner in-his-discretion may:
 17 (a) make such public or private investigations or
 18 examinations within or without outside this state as he the
 19 commissioner deems considers necessary to determine whether
 20 any registration should be granted, denied, or revoked or
 21 whether any person has violated or is about to violate any
 22 provision of parts 1 through 3 of this chapter or any rule
 23 or order hereunder under this chapter or to aid in the
 24 enforcement of parts 1 through 3 of this chapter or in the
 25 prescribing of rules and forms hereunder under this chapter;

1 (b) require or permit any person to file a statement in
 2 writing, under oath or otherwise as the commissioner may
 3 determine, as to all the facts and circumstances concerning
 4 the matter to be investigated; and
 5 (c) publish information concerning any violation of
 6 parts 1 through 3 of this chapter or any rule or order
 7 hereunder under this chapter.
 8 (2) (a) For the purpose of any investigation or
 9 proceeding under parts 1 through 3 of this chapter, the
 10 commissioner or any officer designated by him the
 11 commissioner may administer oaths and affirmations, subpoena
 12 witnesses, compel their attendance, take evidence, and
 13 require the production of any books, papers, correspondence,
 14 memoranda, agreements, or other documents or records which
 15 that the commissioner deems considers relevant or material
 16 to the inquiry.
 17 (b) The commissioner may issue and apply to enforce
 18 subpoenas in this state at the request of a securities
 19 agency or administrator of another state if the activities
 20 constituting an alleged violation for which the information
 21 is sought would be a violation of the Securities Act of
 22 Montana if the activities had occurred in this state.
 23 (3) In case of contumacy by or refusal to obey a
 24 subpoena issued to any person, any court of competent
 25 jurisdiction, upon application by the commissioner, may

1 issue to that person an order requiring him the person to
 2 appear before the commissioner or the officer designated by
 3 him the commissioner, there to produce documentary evidence
 4 if so ordered or to give evidence touching concerning the
 5 matter under investigation or in question. Any failure to
 6 obey the order of the court may be punished by the court as
 7 a contempt of court.

8 (4) No A person is not excused from attending and
 9 testifying or from producing any document or record before
 10 the commissioner or in obedience to the subpoena of the
 11 commissioner or any officer designated by him the
 12 commissioner, or in any proceeding instituted by the
 13 commissioner, on the ground that the testimony or evidence,
 14 {documentary or otherwise}, required of him the person may
 15 tend to incriminate him or subject him the person to a
 16 penalty or forfeiture; but no compelled. However, testimony
 17 or evidence that is compelled following a claim of privilege
 18 against self-incrimination or any information directly or
 19 indirectly derived from such the testimony or evidence may
 20 not be used against the witness in any criminal case.
 21 Nothing-in-this This section prohibits does not prohibit the
 22 commissioner from granting immunity from prosecution for or
 23 on account of any transaction, matter, or thing concerning
 24 which a witness is compelled to testify if the commissioner
 25 determines, in his the commissioner's sole discretion, that

1 the ends of justice would be served thereby. Immunity may
 2 not extend to prosecution or punishment for false statements
 3 given pursuant to the subpoena.

4 (5) The office of the securities commissioner is a
 5 criminal justice agency as defined in 44-5-103."

6 **Section 2.** Section 30-10-305, MCA, is amended to read:

7 "30-10-305. Injunctions and other remedies --
 8 limitations on actions. (1) If it appears to the
 9 commissioner that any person has engaged or is about to
 10 engage in any act or practice constituting a violation of
 11 any provision of parts 1 through 3 of this chapter or any
 12 rule or order hereunder under this chapter, he the
 13 commissioner may in-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 issue a temporary order pending the hearing that:

18 (i) remains in effect until 10 days after the hearing
 19 on--the--allegations-contained-in-the-cease-and-desist-order
 20 is-held examiner issues proposed findings of fact and
 21 conclusions of law and a proposed order; or

22 (ii) that becomes final if the person to whom notice is
 23 addressed does not request a hearing within 15 days after
 24 receipt of the notice; or

25 (b) without the issuance of a cease and desist order,

1 bring an action in any court of competent jurisdiction to
 2 enjoin any such acts or practices and to enforce compliance
 3 with parts 1 through 3 of this chapter or any rule or order
 4 hereunder under this chapter. Upon a proper showing, a
 5 permanent or temporary injunction, restraining order, or
 6 writ of mandamus ~~shall~~ must be granted and a receiver or
 7 conservator may be appointed for the defendant or the
 8 defendant's assets. The commissioner may not be required to
 9 post a bond. If the commissioner prevails, he the
 10 commissioner is entitled to reasonable attorneys' fees as
 11 fixed by the court.

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

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

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

13 (4) (a) An administrative or civil action may not be
 14 maintained by the commissioner under this section to enforce
 15 a liability founded on a violation of 30-10-201(1) through
 16 (3) or 30-10-202 unless it is brought within 2 years after
 17 the violation occurs.

18 (b) An administrative or civil action may not be
 19 maintained by the commissioner under this section to enforce
 20 a liability founded on a violation of parts 1 through 3 of
 21 this chapter or any rule or order issued thereunder under
 22 this chapter, except 30-10-201(1) through (3) and 30-10-202,
 23 unless it is brought within 2 years after discovery by the
 24 commissioner or his the commissioner's staff of the facts
 25 constituting the violation.

LC 0869/01

1 (c) ~~in--no-event-may-an~~ An action may not be maintained
2 under this section to enforce any liability founded on a
3 violation of parts 1 through 3 of this chapter or any rule
4 or order issued thereunder under this chapter unless it is
5 brought within 5 years after the transaction on which the
6 action is based."

7 NEW SECTION. **Section 3.** Effective date. [This act] is
8 effective July 1, 1993.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

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2 INTRODUCED BY D. Kelly T. L...
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8 (2) (a) For the purpose of any investigation or
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17 (b) The commissioner may issue and apply to enforce
18 subpoenas in this state at the request of a securities
19 agency or administrator of another state if the activities
20 constituting an alleged violation for which the information
21 is sought would be a violation of the Securities Act of
22 Montana if the activities had occurred in this state.

23 (3) In case of contumacy by or refusal to obey a
24 subpoena issued to any person, any court of competent
25 jurisdiction, upon application by the commissioner, may

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 3 him the commissioner, there to produce documentary evidence
 4 if so ordered or to give evidence touching concerning the
 5 matter under investigation or in question. Any failure to
 6 obey the order of the court may be punished by the court as
 7 a contempt of court.

8 (4) No A person is not excused from attending and
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 10 the commissioner or in obedience to the subpoena of the
 11 commissioner or any officer designated by him the
 12 commissioner, or in any proceeding instituted by the
 13 commissioner, on the ground that the testimony or evidence,
 14 {documentary or otherwise}, required of him the person may
 15 tend to incriminate him or subject him the person to a
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 21 Nothing-in-this This section prohibits does not prohibit the
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 2 not extend to prosecution or punishment for false statements
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4 (5) The office of the securities commissioner is a
 5 criminal justice agency as defined in 44-5-103."

6 **Section 2.** Section 30-10-305, MCA, is amended to read:

7 "30-10-305. Injunctions and other remedies --
 8 limitations on actions. (1) If it appears to the
 9 commissioner that any person has engaged or is about to
 10 engage in any act or practice constituting a violation of
 11 any provision of parts 1 through 3 of this chapter or any
 12 rule or order hereunder under this chapter, he the
 13 commissioner may in-his-discretion:

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 15 desist from continuing the act or practice after reasonable
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 17 issue a temporary order pending the hearing that:

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 20 is-held examiner issues proposed findings of fact and
 21 conclusions of law and a proposed order; or

22 (ii) that becomes final if the person to whom notice is
 23 addressed does not request a hearing within 15 days after
 24 receipt of the notice; or

25 (b) without the issuance of a cease and desist order,

1 bring an action in any court of competent jurisdiction to
 2 enjoin any such acts or practices and to enforce compliance
 3 with parts 1 through 3 of this chapter or any rule or order
 4 hereunder under this chapter. Upon a proper showing, a
 5 permanent or temporary injunction, restraining order, or
 6 writ of mandamus ~~shall~~ must be granted and a receiver or
 7 conservator may be appointed for the defendant or the
 8 defendant's assets. The commissioner may not be required to
 9 post a bond. If the commissioner prevails, he the
 10 commissioner is entitled to reasonable attorneys' fees as
 11 fixed by the court.

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

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

1 other penalties imposed by the laws of this state and must
 2 be collected by the commissioner in the name of the state of
 3 Montana and deposited in the general fund. Imposition of any
 4 fine under this subsection is an order from which an appeal
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 6 pay a fine referred to in this subsection, the amount of the
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 10 the person to pay a fine also constitutes a forfeiture of
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13 (4) (a) An administrative or civil action may not be
 14 maintained by the commissioner under this section to enforce
 15 a liability founded on a violation of 30-10-201(1) through
 16 (3) or 30-10-202 unless it is brought within 2 years after
 17 the violation occurs.

18 (b) An administrative or civil action may not be
 19 maintained by the commissioner under this section to enforce
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 21 this chapter or any rule or order issued thereunder under
 22 this chapter, except 30-10-201(1) through (3) and 30-10-202,
 23 unless it is brought within 2 years after discovery by the
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2 under this section to enforce any liability founded on a
3 violation of parts 1 through 3 of this chapter or any rule
4 or order issued thereunder under this chapter unless it is
5 brought within 5 years after the transaction on which the
6 action is based."

7 NEW SECTION. **Section 3.** Effective date. [This act] is
8 effective July 1, 1993.

-End-

1 Senate BILL NO. 351
 2 INTRODUCED BY Doherty Tenn
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE RIGHT OF A
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 24 subpoena issued to any person, any court of competent
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SB 351

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2 INTRODUCED BY DOHERTY, TUSS

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 22 commissioner from granting immunity from prosecution for or
 23 on account of any transaction, matter, or thing concerning
 24 which a witness is compelled to testify if the commissioner
 25 determines, in his the commissioner's sole discretion, that

1 the ends of justice would be served thereby. Immunity may
 2 not extend to prosecution or punishment for false statements
 3 given pursuant to the subpoena.

4 (5) The office of the securities commissioner is a
 5 criminal justice agency as defined in 44-5-103."

6 **Section 2.** Section 30-10-305, MCA, is amended to read:

7 "30-10-305. Injunctions and other remedies --
 8 limitations on actions. (1) If it appears to the
 9 commissioner that any person has engaged or is about to
 10 engage in any act or practice constituting a violation of
 11 any provision of parts 1 through 3 of this chapter or any
 12 rule or order hereunder under this chapter, he the
 13 commissioner may in 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 issue a temporary order pending the hearing that:

18 (i) remains in effect until 10 days after the hearing
 19 on--the--allegations-contained-in-the-cease-and-desist-order
 20 is held examiner issues proposed findings of fact and
 21 conclusions of law and a proposed order; or

22 (ii) that becomes final if the person to whom notice is
 23 addressed does not request a hearing within 15 days after
 24 receipt of the notice; or

25 (b) without the issuance of a cease and desist order,

1 bring an action in any court of competent jurisdiction to
 2 enjoin any such acts or practices and to enforce compliance
 3 with parts 1 through 3 of this chapter or any rule or order
 4 hereunder under this chapter. Upon a proper showing, a
 5 permanent or temporary injunction, restraining order, or
 6 writ of mandamus shall must be granted and a receiver or
 7 conservator may be appointed for the defendant or the
 8 defendant's assets. The commissioner may not be required to
 9 post a bond. If the commissioner prevails, he the
 10 commissioner is entitled to reasonable attorneys' fees as
 11 fixed by the court.

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

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

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

13 (4) (a) An administrative or civil action may not be
 14 maintained by the commissioner under this section to enforce
 15 a liability founded on a violation of 30-10-201(1) through
 16 (3) or 30-10-202 unless it is brought within 2 years after
 17 the violation occurs.

18 (b) An administrative or civil action may not be
 19 maintained by the commissioner under this section to enforce
 20 a liability founded on a violation of parts 1 through 3 of
 21 this chapter or any rule or order issued thereunder under
 22 this chapter, except 30-10-201(1) through (3) and 30-10-202,
 23 unless it is brought within 2 years after discovery by the
 24 commissioner or his the commissioner's staff of the facts
 25 constituting the violation.

1 (c) ~~in--no-event-may-an~~ An action may not be maintained
2 under this section to enforce any liability founded on a
3 violation of parts 1 through 3 of this chapter or any rule
4 or order issued thereunder under this chapter unless it is
5 brought within 5 years after the transaction on which the
6 action is based."

7 NEW SECTION. **Section 3.** Effective date. [This act] is
8 effective July 1, 1993.

-End-