

## 1 SENATE BILL NO. 17

2 INTRODUCED BY WATERMAN

3 BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SENIOR INSURANCE AND A SENIOR SECURITIES  
6 FRAUD EDUCATION AND PREVENTION PROGRAM; REQUIRING DISCLOSURE OF SUSPECTED SENIOR  
7 INSURANCE OR SECURITIES FRAUD TO THE COMMISSIONER OF INSURANCE AND SECURITIES;  
8 CREATING THE OFFENSES OF SENIOR INSURANCE AND SENIOR SECURITIES FRAUD; PROVIDING  
9 PENALTIES FOR SENIOR INSURANCE AND SENIOR SECURITIES FRAUD; AND PROVIDING AN EFFECTIVE  
10 DATE."

11  
12 WHEREAS, the State Auditor's Office through its Insurance and Securities Departments has found  
13 that fraud involving senior citizens accounts for 80% of all insurance investigation cases and the majority  
14 of all security investigation cases; and

15 WHEREAS, senior fraud deprives senior citizens of their life savings and quality of life, and the  
16 burden of these losses often falls on Medicaid and other social programs.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 **NEW SECTION. Section 1. Senior insurance fraud education and prevention program.** (1) The  
21 commissioner may:

22 (a) establish an education program for senior citizens and members of aging networks to enable  
23 citizens to recognize senior insurance fraud and establish a method for reporting senior insurance fraud;

24 (b) conduct investigations of fraudulent insurance practices targeting senior citizens; and

25 (c) refer evidence of suspected senior insurance fraud to the attorney general or other appropriate  
26 prosecuting authority.

27 (2) An insurer, insurance producer, or other person who has reason to believe senior insurance  
28 fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the  
29 occurrence.

30 (3) In the absence of malice, an insurer, insurance producer, or other person may not be subjected

1 to civil liability for reporting or providing information or otherwise cooperating with an investigation of  
2 senior insurance fraud.

3  
4 **NEW SECTION. Section 2. Senior insurance fraud.** (1) A person commits the act of senior  
5 insurance fraud when the person, in the course of offering or selling insurance to an individual over 60  
6 years of age:

7 (a) engages in unfair trade practices as prohibited in 33-18-202, 33-18-203, or 33-18-204; or

8 (b) procures the sale of insurance through intimidation or coercion.

9 (2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the  
10 penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section  
11 results in a lien upon the assets and property of the person as provided in 33-1-318(3).

12 (3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person  
13 who commits senior insurance fraud to make full restitution to the victim for all financial losses sustained  
14 as a result of the fraud at 10% interest a year from the date of the order for payment of restitution, costs,  
15 and reasonable attorney fees, less the amount of any income or refund received by the victim from the  
16 insurance. Any sums ordered to be paid under this subsection constitute a lien upon all of the assets  
17 located in this state of the person ordered to pay. The person in whose favor sums are ordered to be paid  
18 under this subsection may recover those sums by suit, including attorney fees and costs incurred in  
19 collection. Failure of a person to pay any sums ordered under this subsection constitutes a forfeiture of  
20 the right to do business in this state under this title.

21 (4) A person who purposely or knowingly commits senior insurance fraud involving a  
22 misappropriation or theft of insurance premiums commits the offense of theft and is punishable as provided  
23 in 45-6-301.

24  
25 **NEW SECTION. Section 3. Senior securities fraud education and prevention program.** (1) The  
26 commissioner may:

27 (a) establish an education program for senior citizens and members of aging networks to enable  
28 citizens to recognize senior securities fraud and establish a method for the reporting of senior securities  
29 fraud;

30 (b) conduct investigations of fraudulent securities practices targeting senior citizens; and

1 (c) refer evidence of suspected senior securities fraud to the attorney general or other  
2 appropriate prosecuting authority.

3 (2) A broker-dealer, salesperson, investment adviser, investment adviser representative, or other  
4 person who has reason to believe senior securities fraud has occurred shall report the suspected fraud to  
5 the commissioner within 60 days of discovery of the occurrence.

6 (3) In the absence of malice, a broker-dealer, salesperson, investment adviser, investment adviser  
7 representative, or other person may not be subjected to civil liability for filing reports, providing information,  
8 or otherwise cooperating with an investigation of senior securities fraud.

9  
10 **NEW SECTION. Section 4. Senior securities fraud.** (1) A person commits the act of senior  
11 securities fraud when the person, in the course of offering or selling securities to an individual over 60 years  
12 of age, employs fraudulent or other practices prohibited by 30-10-301.

13 (2) The commissioner may, after having conducted a hearing pursuant to 30-10-305, impose any  
14 penalty provided for in 30-10-305. Failure to pay a fine under this section results in a lien upon the assets  
15 and property of the person as provided in 30-10-305.

16 (3) In addition to any penalty provided for in 30-10-305, the commissioner may require a person  
17 who commits senior securities fraud to make full restitution to the victim to recover the consideration paid  
18 for the security at 10% a year from the date of the order of payment, costs, and reasonable attorney fees,  
19 less the amount of any income received by the victim on the security, upon the tender of the security or  
20 for damages recovered if the person no longer owns the security. Any sums ordered to be paid under this  
21 subsection constitute a lien upon all of the assets located in this state of the person ordered to pay. The  
22 person in whose favor sums are ordered to be paid under this subsection may recover those sums by suit,  
23 including attorney fees and costs incurred in collection. Failure of a person to pay any sums ordered under  
24 this subsection constitutes a forfeiture of the right to do business in this state under this title.

25  
26 **NEW SECTION. Section 5. Codification instruction.** (1) [Sections 1 and 2] are intended to be  
27 codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to  
28 [sections 1 and 2].

29 (2) [Sections 3 and 4] are intended to be codified as an integral part of Title 30, chapter 10, part  
30 3, and the provisions of Title 30, chapter 10, part 3, apply to [sections 3 and 4].



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0017, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a senior insurance and a senior securities fraud education and prevention program.

ASSUMPTIONS:

1. The estimated workload associated with the passage and approval of this bill will require an additional 1.00 FTE Grade 14 compliance specialist/investigator in the State Auditor's Office and associated operating expenses. The annual operating expenses are estimated to consist of \$4,000 for general operating expenses and \$3,300 for one hearing. Equipment costs in fiscal year 1998 are estimated to be \$3,585 for a personal computer, desk, chair, and file cabinet. The funding source is the general fund.
2. The additional 1.00 FTE will offer compliance, investigation, and education services to address insurance fraud investigations and securities fraud cases that involve senior citizens.
3. Section 33-1-317, MCA, provides for administrative fines of up to \$25,000 for insurance companies and \$5,000 for insurance producers per violation.
4. Section 30-10-305, MCA, provides for \$5,000 in administrative fines per violation for securities violations.
5. The estimated combined enforcement revenue collection to the general fund is based on an estimated five administrative actions per year, one of which goes to a hearing, for both insurance and securities. The estimated general fund revenue, based on an average fine of \$3,500 per administrative action, is \$17,500 per year.

FISCAL IMPACT:

Expenditures:

State Auditor's Office:

	<u>FY98</u>	<u>FY99</u>
FTE	1.00	1.00
Personal Services	31,835	31,835
Operating Expenses	7,300	7,300
Equipment	<u>3,585</u>	<u>0</u>
TOTALS	42,720	39,135

Funding:

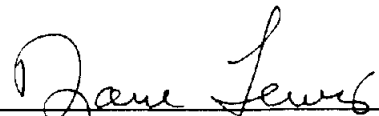
General Fund (01)	42,720	39,135
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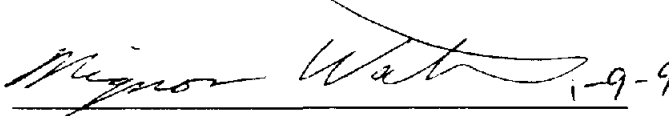
Revenues:

Fines (01)	17,500	17,500
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Net Impact:

General Fund (01)	(25,220)	(21,635)
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 1-8-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

 1-9-97  
 MIGNON WATERMAN, PRIMARY SPONSOR      DATE

Fiscal Note for SB0017, as introduced