

SENATE BILL NO. 124
INTRODUCED BY J. TESTER
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS, AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS; REQUIRING AN INSURER OR INSURANCE PRODUCER TO RECOMMEND ONLY PRODUCTS THAT ARE SUITABLE FOR AN INDIVIDUAL CONSUMER; PROVIDING FOR RESTITUTION BY AN INSURER OR INSURANCE PRODUCER MAKING AN UNSUITABLE RECOMMENDATION; PROHIBITING INSURERS AND INSURANCE PRODUCERS FROM BORROWING FROM CLIENTS; PROHIBITING LIFE SETTLEMENT INSURANCE PRODUCTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT PURCHASE AGREEMENTS AND VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS OPERATING WITHOUT A LICENSE; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT PROVIDER"; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE; AND AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-317, 33-1-318, 33-3-401, 33-17-1004, 33-20-1302, 52-3-803, AND 52-3-825, MCA."

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

NEW SECTION. **Section 1. Suitability.** (1) In recommending the purchase or replacement of a life, annuity, long-term care, or medicare supplement insurance policy or viatical settlement contract to a customer, an insurer or insurance producer must have reasonable grounds for believing that the recommendation is suitable

for the customer and shall make reasonable inquiries to determine suitability.

(2) Suitability must be determined by reference to the totality of a specific customer's circumstances, including but not limited to the customer's income, age, health, and need for insurance, as well as the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the value, benefits, and costs of the recommended policy or policies or contract.

(3) An insurer offering life, annuity, long-term care, or medicare supplement insurance or viatical settlement contracts shall establish and effectuate policies and procedures for determining suitability and making reasonable inquiries concerning suitability.

(4) A recommendation that is suitable is a recommendation for the purchase of a product that assists an individual in meeting the individual's insurance needs or financial objectives.

(5) An insurer or insurance producer who violates this section is subject to the penalties in 33-1-317, 33-1-318, or 33-2-119.

(6) The commissioner is authorized to adopt rules for the implementation of this section, including but not limited to appropriate definitions, exemptions when there is not a direct solicitation of an individual, types of plans that are exempt, requirements for the adoption of insurer's policies, and procedures governing suitability and the type of information to be considered in determining suitability.

NEW SECTION. Section 2. Prohibition of borrowing from or acting as legal guardian of insured or policyholder. An insurer or insurance producer may not borrow money from an insured or policyholder or act as a legal guardian of an insured or policyholder if the insurer or insurance producer conducts insurance business with the insured or policyholder when the insurance business includes but is not limited to the solicitation, offer, sale, or replacement of insurance or a contract.

NEW SECTION. Section 3. Prohibition of life settlement insurance -- definition. (1) Insurance products known as "life settlements", "senior life settlements", or similar products may not be offered or sold in this state.

(2) For the purposes of this title, "life settlement" includes the sale of an existing life policy for cash payment.

Section 4. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires

otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery

contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory

services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

- (a) silver;
- (b) gold;
- (c) platinum;
- (d) palladium;
- (e) copper; and
- (f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

(a) an issuer in:

(i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or

(iv) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement purchase agreement or viatical settlement contract; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 5. Section 33-1-315, MCA, is amended to read:

"33-1-315. Witnesses -- production of records -- subpoena -- failure to respond. (1) With respect to the subject of any examination or investigation being conducted by the commissioner, or the commissioner's designee if general written authority has been given the designee by the commissioner, the commissioner or the designee may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. Subpoenas of witnesses must be served in the same manner as if issued from a district court.

(2) If in connection with ~~any~~ an examination of an insurer the commissioner or the commissioner's designee desires to examine an officer, director, or manager who is outside this state, the commissioner or the commissioner's designee may conduct and enforce by all appropriate and available means any examination under oath in any other state or territory of the United States in which ~~an~~ the officer, director, or manager ~~may then presently be~~ is located, to the full extent permitted by the laws of ~~another~~ that state or territory.

(3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's designee or refuses to testify or answer any material question or to produce records, books, papers, contracts, or documents when required to do so, the commissioner or the commissioner's designee shall institute proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness for neglect or refusal to obey the summons or other order.

(4) Witness fees and mileage, if claimed, must be allowed ~~the~~ on the same basis as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony must be itemized and paid by the person being examined if the person is found to have been in violation of the law as to the matter with respect to which the ~~witness was~~ witnesses were subpoenaed.

(5) A person who knowingly fails to attend, answer, and produce records, documents, or other evidence requested by the commissioner or the commissioner's designee, who knowingly fails to give full and truthful information or to answer in writing to any material inquiry of the commissioner or the commissioner's designee, relative to the subject of an examination, investigation, or hearing, or who knowingly fails to appear and testify under oath before the commissioner or the commissioner's designee is subject to the provisions of 33-1-317 and 33-1-318."

Section 6. Section 33-1-317, MCA, is amended to read:

"33-1-317. Penalty imposed by commissioner -- restitution. (1) The commissioner may, after ~~having conducted~~ conducting a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$25,000 upon a person found to have violated a provision of this code or regulation promulgated by the commissioner, except that the fine imposed upon insurance producers or adjusters may not exceed \$5,000 ~~per~~ for each violation. 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. Imposition of a fine under this section is an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

(2) The commissioner may, after conducting a hearing pursuant to 33-1-701, require a person found to be in violation of [section 1] to make restitution for all financial losses sustained by any person as a result of the violation. The commissioner may further require a person found to have violated a provision of [section 1] to pay 10% annual interest on the amount of restitution from the date of violation."

Section 7. Section 33-1-318, MCA, is amended to read:

"33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of ~~33-1-501; 33-14-201; chapters 2, 16 through 18, and 30 of this title; or part 4 of chapter 25 of this title;~~ this code or any rule or order issued under this code, ~~he~~ the commissioner may:

(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;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin ~~such~~ the acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must 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.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing

is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the ~~hearing~~ hearings examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must issue within 30 days of the submission of the comments.

(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~~ for each violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. 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 a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a 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 that 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~~ the right to do business in this state under this code."

Section 8. Section 33-3-401, MCA, is amended to read:

"33-3-401. Home office and records -- penalty for unlawful removal of records or assets. (1) ~~Every~~ Each domestic insurer ~~shall~~ must have and shall maintain its principal place of business and home office in this state and shall ~~keep therein~~ maintain at its principal place of business or home office complete records of its assets, transactions, and affairs in accordance with ~~such~~ methods and systems ~~as are~~ customary or suitable ~~as~~ to the kind or kinds of insurance ~~transacted~~ that it transacts. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or ~~his~~ the commissioner's ~~duly constituted~~ examiner.

(2) ~~Every~~ Each domestic insurer ~~shall~~ must have and shall maintain its assets in this state, except ~~as~~ to for:

(a) real property and appurtenant personal property ~~appurtenant thereto~~ lawfully owned by the insurer and located outside this state; and

(b) ~~such~~ property of the insurer ~~as may be~~ that is customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) ~~below~~.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for ~~such~~

reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of ~~such removal or concealment of such records or assets or material part thereof from the commissioner~~ is prohibited. Any person who removes or attempts to remove ~~such all or a material part of~~ records or assets ~~or such material part thereof from the home office, or other place of business, or of safekeeping of the insurer in this state with the intent to remove the same records or assets from this state or who conceals or attempts to conceal the same records or assets from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than \$10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or a material part thereof of the records or assets outside this state beyond the period therefor specified in the commissioner's consent under which the records were ~~so removed thereat~~ or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.~~

(4) This section ~~shall~~ does not ~~be deemed to~~ prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states ~~where~~ when necessary or convenient to the transaction of its business and keeping ~~therein~~ there the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by ~~such an~~ the out-of-state office, as long as ~~such the~~ records and assets are made readily available at ~~such that~~ office for examination by the commissioner ~~at his request~~ when requested;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

(5) An insurer that fails to maintain records and make them available to the commissioner or the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119 and may be subject to the delinquency proceedings described in Title 33, chapter 2, part 13."

Section 9. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as insurance producer or adjuster without license -- penalty. (1) Except as provided In addition to the requirements and penalties described in 33-17-201 and 33-17-411, a person who, in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is subject to the provisions of 33-1-317 and 33-1-318 and may be subject

to conviction of a crime.

(2) A person convicted under this section shall, for a first conviction, guilty of a misdemeanor and upon conviction shall be fined \$500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both."

Section 10. Section 33-20-1302, MCA, is amended to read:

"33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

- (i) offers or advertises the availability of viatical settlement contracts;
- (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or
- (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(2) "Viatical settlement contract" means a written agreement between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary.

(3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

~~(b) A viatical settlement provider may use the term "life settlement provider" to describe the business~~

~~transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".~~

~~(c)~~(b) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

(4) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

(5) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider or licensed viatical settlement broker."

Section 11. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental

health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person's money, assets, or property;

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 12. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) ~~Any A~~ person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) ~~Any An~~ individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a person with a developmental disability is guilty of a crime misdemeanor ~~and upon a first conviction may be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. Upon a second or succeeding conviction, an individual and~~ may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed \$10,000, or both."

NEW SECTION. **Section 13. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 17, part 10, and the provisions of Title 33, chapter 17, part 10, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 1, and the provisions of Title 33, chapter 1, part 1, apply to [section 3].

- END -

