



AN ACT CREATING A SECURITIES WHISTLEBLOWER AWARD AND PROTECTION ACT; PROVIDING DEFINITIONS; PROVIDING AUTHORITY FOR THE COMMISSIONER TO AWARD WHISTLEBLOWERS; PROVIDING FOR ANONYMOUS WHISTLEBLOWER COMPLAINTS; PROVIDING PROCEDURES FOR WHISTLEBLOWER AWARD PAYMENTS; PROVIDING CRITERIA FOR AWARDS AND DISQUALIFICATIONS; PROVIDING FOR PROTECTIONS OF WHISTLEBLOWERS AND INTERNAL REPORTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 11] may be cited as the "Whistleblower Award and Protection Act".

Section 2. Purpose. The Whistleblower Award and Protection Act provides monetary awards to whistleblowers and provides protection for those who make whistleblower complaints.

Section 3. Definitions. As used in [sections 1 through 11], unless the context requires otherwise:

(1) (a) "Monetary sanction" means any money, including penalties, disgorgement, and interest ordered to be paid as a result of an administrative or judicial action.

(b) The term does not include restitution.

(2) "Original information" means information that is:

(a) derived from the independent knowledge or analysis of a whistleblower;

(b) not already known to the commissioner from any other source, unless the whistleblower is the original source of the information;

(c) not exclusively derived from an allegation made in an administrative or judicial hearing, in a

governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and

(d) provided to the commissioner for the first time after [the effective date of this act].

(3) "Whistleblower" means an individual who, alone or jointly with others, provides the state or other law enforcement agency with information pursuant to the provisions set forth in [sections 1 through 11], and the information relates to a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur.

Section 4. Authority to make whistleblower award. Subject to the provisions of [sections 1 through 11], the commissioner may award an amount to one or more whistleblowers who voluntarily provide original information in writing, and in the form and manner required by the commissioner that leads to the successful enforcement of an administrative or judicial action under Title 30, chapter 10.

Section 5. Anonymous whistleblower complaints. (1) An individual may make an anonymous whistleblower complaint.

(2) Any individual who anonymously makes a claim for a whistleblower award shall be represented by counsel at the time of an award in [section 4] in order to verify qualification for the award. Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the commissioner may require, directly or through counsel for the whistleblower. The identity of the whistleblower must remain protected from public disclosure as stated in subsection (1) and [section 11(7)].

Section 6. Amount of whistleblower award. If the commissioner determines to make one or more awards under [section 4], the aggregate amount of awards that may be awarded in connection with an administrative or judicial action may not be less than 10% or more than 30% of the monetary sanctions collected in the related administrative or judicial action.

Section 7. Discretion to determine amount of whistleblower award. The determination of the amount of an award made under [sections 1 through 11] is in the discretion of the commissioner consistent with

[sections 6 and 9].

Section 8. Source of payment of whistleblower award. (1) The commissioner is authorized to order that a whistleblower award is paid:

- (a) directly to a known whistleblower; or
- (b) for an anonymous whistleblower, to counsel for the whistleblower as provided in [section 6], who shall distribute the award to the anonymous whistleblower.

(2) Any whistleblower award under [sections 1 through 11] must be paid solely from the monetary sanction collected in the related administrative or judicial action and has first priority over other payment or disbursement.

Section 9. Factors used to determine amount of whistleblower award. In determining the amount of an award under [sections 1 through 11], the commissioner shall consider:

- (1) the significance of the original information provided by the whistleblower to the success of the administrative or judicial action;
- (2) the degree of assistance provided by the whistleblower in connection with the administrative or judicial action;
- (3) the interest of the commissioner in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and
- (4) any other factors the commissioner considers relevant.

Section 10. Disqualification from award. The commissioner may not provide an award to a whistleblower under this section if the whistleblower:

- (1) is convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award;
- (2) acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates 15 U.S.C. 78j-1;
- (3) fails to submit information to the commissioner in the form as the commissioner may prescribe;

(4) knowingly makes a false, fictitious, or fraudulent statement or misrepresentation as part of, or in connection with, the original information provided or the administrative or judicial action for which the original information was provided;

(5) in the whistleblower's submission, its other dealings with the commissioner, or in its dealings with another authority in connection with a related action, knowingly makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the commissioner or another authority in connection with a related action;

(6) knowingly provides original information that is false, fictitious, or fraudulent;

(7) has a legal duty to report the original information to the commissioner;

(8) is, or was at the time the whistleblower acquired the original information submitted to the commissioner, a member, officer, or employee of the office of the state auditor, the United States securities and exchange commission, any securities regulatory authority of another state, a self-regulatory organization, the public company accounting oversight board, or any law enforcement organization;

(9) is, or was at the time the whistleblower acquired the original information submitted to the commissioner, a member, officer, or employee of a foreign government, of any political subdivision, department, agency, or instrumentality of a foreign government, or of any other foreign financial regulatory authority as that term is defined in 15 U.S.C. 78c(a)(52);

(10) is the spouse, parent, child, or sibling of the commissioner or an employee of the office of the state auditor, or resides in the same household as the commissioner or an employee of the office of the state auditor; or

(11) directly or indirectly acquires the original information provided to the commissioner from a person:

(a) who is subject to subsection (2), unless the information is not excluded from that person's use, or provides the commissioner with information about possible violations involving that person;

(b) who is a person described in subsection (8), (9), or (10); or

(c) with the intent to evade any provision of [sections 1 through 11].

Section 11. Protection of whistleblowers and internal reporters. (1) An employer may not

terminate, discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner retaliate against an individual because of any lawful act done by the individual:

(a) in providing information to the state or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur;

(b) in initiating, testifying in, or assisting in any investigation or administrative or judicial action of the commissioner, the office of the state auditor, or other law enforcement agency based upon or related to such information concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder;

(c) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7201 et seq., the Securities Act of 1933, 15 U.S.C. 77a, et seq., the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., 18 U.S.C. 1513(e), any other law, rule, or regulation subject to the jurisdiction of the United States securities and exchange commission or the Montana Securities Act or a rule adopted thereunder; or

(d) in making disclosures to a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) regarding matters subject to the jurisdiction of the commissioner, the office of the state auditor, or the United States securities and exchange commission.

(2) Notwithstanding subsection (1), an individual is not protected under this section if:

(a) the individual knowingly makes a false, fictitious, or fraudulent statement or misrepresentation;

(b) the individual uses a false writing or document knowing that the writing or document contains false, fictitious, or fraudulent information; or

(c) the individual knows that the disclosure is of original information that is false, fictitious, or fraudulent.

(3) An individual who alleges any act of retaliation in violation of subsection (1) may bring an action for the relief provided in subsection (6) in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection (3) may be served at any place in the United States.

(5) An action under subsection (3) must be brought within:

- (a) 3 years after the date on which the violation of subsection (1) occurred; or
- (b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subsection (1), but not more than 6 years after the date on which the violation occurred.

(6) A court may award as relief for an individual prevailing in an action brought under this section:

- (a) reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;
- (b) two times the amount of backpay otherwise owed to the individual, with interest;
- (c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;
- (d) actual damages;
- (e) an injunction to restrain a violation; or
- (f) any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under Title 2, chapter 6, parts 10 through 12. This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) A person may not take any action to impede an individual from communicating directly with the commissioner's staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(a) agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(b) information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would

otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in [sections 1 through 11] may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section diminishes the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement.

Section 12. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 30, chapter 10, and the provisions of Title 30, chapter 10, apply to [sections 1 through 11].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Applicability. [This act] applies to original information provided by a whistleblower on or after October 1, 2021.

- END -

I hereby certify that the within bill,
HB 64, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 64

INTRODUCED BY T. MOORE

BY REQUEST OF THE STATE AUDITOR

AN ACT CREATING A SECURITIES WHISTLEBLOWER AWARD AND PROTECTION ACT; PROVIDING DEFINITIONS; PROVIDING AUTHORITY FOR THE COMMISSIONER TO AWARD WHISTLEBLOWERS; PROVIDING FOR ANONYMOUS WHISTLEBLOWER COMPLAINTS; PROVIDING PROCEDURES FOR WHISTLEBLOWER AWARD PAYMENTS; PROVIDING CRITERIA FOR AWARDS AND DISQUALIFICATIONS; PROVIDING FOR PROTECTIONS OF WHISTLEBLOWERS AND INTERNAL REPORTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.