

## 1 HOUSE BILL NO. 41

2 INTRODUCED BY M. FUNK

3 BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SECURITIES ACT; REVISING  
6 LAWS RELATING TO PLACE OF BUSINESS FOR INVESTMENT ADVISERS AND BROKER-DEALERS;  
7 AMENDING SECTION 30-10-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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11 **Section 1.** Section 30-10-201, MCA, is amended to read:

12 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**  
13 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact  
14 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is  
15 registered under parts 1 through 3 of this chapter.

16 (2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer  
17 or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered  
18 under parts 1 through 3 of this chapter.

19 (3) It is unlawful for a person to transact business in this state as an investment adviser or as an  
20 investment adviser representative unless:

21 (a) the person is registered under parts 1 through 3 of this chapter;

22 (b) the person does not have a place of business in the state and the person's only clients in this state  
23 are:

24 (i) investment companies, as defined in the Investment Company Act of 1940, or insurance  
25 companies;

26 (ii) other investment advisers;

27 (iii) federal covered advisers;

28 (iv) broker-dealers;

1 (v) banks;

2 (vi) trust companies;

3 (vii) savings and loan associations;

4 (viii) employee benefit plans with assets of not less than \$1 million;

5 (ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees with  
6 investment control; or

7 (x) other institutional investors as designated by rule or order of the commissioner; or

8 (c) the person does not have a place of business in this state and, during the preceding 12-month  
9 period, the person has not had more than five clients who are residents of this state, other than those clients  
10 specified in subsection (3)(b). This subsection (3)(c) also applies to broker-dealers and investment advisers.

11 (4) Except for federal covered advisers whose only clients are clients listed in subsection (3)(b) or  
12 who meet the requirements of subsection (3)(c), it is unlawful for a federal covered adviser to conduct advisory  
13 business in this state unless the federal covered adviser complies with the provisions of subsection (6)(b).

14 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,  
15 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment adviser  
16 representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

17 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an investment  
18 adviser representative who maintains a place of business in this state unless the investment adviser  
19 representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

20 (6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-  
21 dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser  
22 representative may apply for registration by filing an application in the form that the commissioner prescribes  
23 and payment of the fee prescribed in 30-10-209.

24 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) or  
25 who meet the requirements of subsection (3)(c), a federal covered adviser shall, prior to acting as a federal  
26 covered adviser in this state, submit a notice filing to the commissioner consisting of the fee prescribed in 30-  
27 10-209 and copies of any documents filed with the securities and exchange commission that the commissioner  
28 requires by rule or order. A notice filing is effective upon its receipt by the commissioner.

1           (7) The application must contain whatever information the commissioner requires. A registration  
2 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not  
3 be withdrawn before the commissioner approves or denies the registration, without the express written consent  
4 of the commissioner.

5           (8) When the registration requirements are met, the commissioner shall make the registration  
6 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser  
7 representative may not be withdrawn or terminated without the express written consent of the commissioner.

8           (9) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser  
9 representative or a notice filing by a federal covered adviser:

10           (a) is effective until December 31 following the registration or notice filing or any other time as the  
11 commissioner may by rule adopt; and

12           (b) may be renewed pursuant to subsection (11).

13           (10) (a) The registration of a salesperson is not effective during any period when the salesperson is  
14 not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson  
15 begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or  
16 broker-dealer shall promptly notify the commissioner.

17           (b) The registration of an investment adviser representative is not effective during any period when  
18 the person is not associated with either an investment adviser registered under this act or a federal covered  
19 adviser with an effective notice filing who is specified in the application. When an investment adviser  
20 representative begins or terminates a connection with an investment adviser, the investment adviser shall  
21 promptly notify the commissioner. When an investment adviser representative begins or terminates a  
22 connection with a federal covered adviser, the investment adviser representative shall promptly notify the  
23 commissioner.

24           (11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser  
25 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration of  
26 the registration or notice filing, an application containing information as the commissioner may require to  
27 indicate any material change in the information contained in the original application or any renewal application  
28 for registration or notice filing, and payment of the fee prescribed by 30-10-209. A broker-dealer who is not a

1 member of the national association of securities dealers, inc., is required to file a financial statement of the  
2 broker-dealer within 90 days of the end of the broker-dealer's fiscal year, except as provided in section 15 of the  
3 Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for  
4 registration of a successor, to become effective upon approval of the commissioner.

5 (12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a  
6 broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser,  
7 every registered broker-dealer and investment adviser shall make and keep accounts and other records, except  
8 with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner by rule or  
9 order. All required records of an investment adviser must be preserved for the period the commissioner  
10 prescribes by rule or order. All the records of a registered broker-dealer or investment adviser are subject at  
11 any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state,  
12 by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public  
13 interest or for the protection of investors.

14 (b) The commissioner may require investment advisers who are registered or required to be  
15 registered to furnish or disseminate certain information as necessary or appropriate in the public interest or for  
16 the protection of investors and advisory clients.

17 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate or  
18 incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting  
19 amendment.

20 (13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer,  
21 salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order  
22 is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment  
23 adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or  
24 person directly or indirectly controlling the broker-dealer or investment adviser:

25 (a) has filed an application for registration under this section that, as of its effective date or as of any  
26 date after filing in the case of an order denying effectiveness, was incomplete in any material respect or  
27 contained any statement that was, in light of the circumstances under which it was made, false or misleading  
28 with respect to any material fact;

1 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this  
2 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

3 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities  
4 business or any felony;

5 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or  
6 continuing any conduct or practice involving any aspect of the securities business;

7 (e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a  
8 broker-dealer, salesperson, investment adviser, or investment adviser representative;

9 (f) is the subject of an adjudication or determination, within the past 5 years, by a securities or  
10 commodities agency or administrator of another state or a court of competent jurisdiction, that the person has  
11 violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940,  
12 the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of  
13 any other state;

14 (g) has engaged in dishonest or unethical practices in the securities business;

15 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the  
16 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order  
17 against a broker-dealer or investment adviser under this subsection (13) without a finding of insolvency as to  
18 the broker-dealer or investment adviser;

19 (i) has not complied with a condition imposed by the commissioner under this section or is not  
20 qualified on the basis of such factors as training, experience, or knowledge of the securities business;

21 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under  
22 this subsection (13), and the commissioner shall vacate any order when the deficiency has been corrected; or

23 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser  
24 representatives or employees to ensure their compliance with this act.

25 (14) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact  
26 or transaction known to the commissioner when registration became effective unless the proceeding is  
27 instituted within 30 days after the date on which the registration became effective.

28 (15) The commissioner may by order summarily postpone or suspend registration pending final

1 determination of any proceeding under this section.

2 (16) Upon the entry of the order under subsection (13), the commissioner shall promptly notify the  
3 applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a  
4 salesperson or investment adviser representative, that it has been entered and of the reasons for the order and  
5 that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification,  
6 the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered by  
7 the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing  
8 is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the  
9 order or extend it until final determination.

10 (17) If the commissioner finds that a registrant or applicant for registration is no longer in existence or  
11 has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser  
12 representative or is subject to an adjudication of mental incompetence or to the control of a committee,  
13 conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel  
14 the registration or application.

15 (18) The commissioner may, after suspending or revoking registration of any broker-dealer,  
16 salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000  
17 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in  
18 addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in  
19 the name of the state of Montana and deposited in the general fund. Imposition of any fine under this  
20 subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer,  
21 salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this  
22 subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer,  
23 salesperson, investment adviser, or investment adviser representative in this state and may be recovered by  
24 suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment  
25 adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do  
26 business in this state under parts 1 through 3 of this chapter.

27 (19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other  
28 salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as

1 both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if  
2 the sole proprietor meets the examination requirements established by the commissioner by rule.

3 (20) A person who is subject to the provisions of this section and who has passed the general  
4 securities principal's examination is not required to also pass the uniform investment adviser law examination.  
5 The commissioner shall by rule provide for a form that a person who passes the general securities principal's  
6 examination shall file with the commissioner as a verification of having passed the examination unless the  
7 commissioner can verify electronically that the person has passed the exam."

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9 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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