THE MAKE CORRUPT POLITICIANS PAY ACT

Bracketed terms mark insertions for the enacting state: dollar amounts, felony classes, and cross-references to the state securities act, ethics statutes, pension forfeiture law, and long-arm provisions. The drafter’s notes following the text identify the source law for each section and flag each deliberate departure from that source.

AN ACT relating to the purchase and sale of securities by holders of public office while aware of material nonpublic governmental information; codifying a duty of trust and confidence; creating private civil actions and remedies; establishing investigative and enforcement authority in the attorney general; providing for disgorgement, civil penalties, criminal offenses, whistleblower awards, and pension forfeiture; establishing jurisdiction and venue where victims are located; creating a restitution fund; and providing for severability.

BE IT ENACTED BY THE LEGISLATURE OF [STATE]:

SECTION 1. SHORT TITLE.

This act may be cited as the Make Corrupt Politicians Pay Act.

SECTION 2. FINDINGS AND PURPOSE.

The legislature finds that:

(a) Public officials obtain material nonpublic information in the ordinary course of legislative, executive, and judicial service, including through classified and confidential briefings, committee oversight, procurement and contracting, regulatory and licensing decisions, and law enforcement investigations.

(b) Congress enacted the Stop Trading on Congressional Knowledge Act of 2012, Public Law 112-105, which affirms that Members of Congress and congressional employees owe a duty of trust and confidence with respect to material nonpublic information derived from their positions, and which affirms that executive and judicial officers and employees remain subject to insider trading prohibitions.

(c) The STOCK Act creates no private right of action, and its principal administrative sanction for a late transaction report is a $200 filing fee assessed under the Ethics in Government Act procedures it amended.

(d) Since 1934, section 16(b) of the Securities Exchange Act, 15 U.S.C. 78p(b), has required statutorily defined insiders to surrender to the issuer any profit from a purchase and sale, or sale and purchase, of the issuer’s equity securities within six months, without proof of intent or of use

of inside information, and has authorized any security holder of the issuer to sue on the issuer's behalf when the issuer declines.

(e) Article 23-A of the New York General Business Law, known as the Martin Act, authorizes the attorney general of New York to investigate securities fraud by subpoena before filing suit, to obtain injunctions, restitution, and disgorgement without proof of scienter, and to prosecute violations criminally.

(f) Model Penal Code section 1.03 and the venue provisions of state computer crime statutes, including Virginia Code section 19.2-249.2, locate an offense where its results occur and where victims are located, and the Supreme Court of the United States sustained state jurisdiction over out-of-state conduct producing in-state effects in Strassheim v. Daily, 221 U.S. 280 (1911).

(g) The National Securities Markets Improvement Act of 1996 preserves the authority of the states to investigate and bring enforcement actions with respect to fraud or deceit in connection with securities transactions, 15 U.S.C. 77r(c).

(h) The purposes of this act are to protect investors located in this state from securities fraud committed by holders of public office, to deter the conversion of governmental information into private trading profit, and to recover ill-gotten gains for victims and for the public.

SECTION 3. DEFINITIONS.

As used in this act:

(1) "Attorney general" means the attorney general of this state.

(2) A person acts "while aware" of information if the person knows or possesses the information at the time of the purchase, sale, or communication.

(3) "Contemporaneous transaction" means a purchase or sale of a security of the same class as the security involved in a violation of section 5, or of an option or security-based swap referencing it, executed on the opposite side of the violative transaction during the period beginning with the first violative transaction and ending at the earlier of public dissemination of the material nonpublic governmental information or the close of the [fifth] trading day after the first violative transaction.

(4) "Covered official" means an individual who serves a government, or an entity of a government, domestic or foreign, in any public office, public employment, or public engagement, whatever the title. The term includes an individual holding elective or appointive office, an officer or employee of a legislative, executive, or judicial entity, personal, committee, and leadership staff, and an individual engaged by appointment or contract to perform or advise on governmental functions. An individual formerly described in this paragraph remains a covered official with respect to material nonpublic governmental information obtained during service.

(5) “Covered person” means, with respect to a covered official:

(A) the official’s spouse or domestic partner and any dependent child of the official;

(B) any account, partnership, corporation, or other entity, and any trust other than a qualified blind trust, over which the official exercises investment discretion or control, directly or indirectly; and

(C) any person who executes a securities transaction at the direction or suggestion of the official.

(6) “Fund” means the Securities Victims Restitution Fund established by section 19.

(7) “Issuer” has the meaning given in [STATE SECURITIES ACT].

(8) “Material nonpublic governmental information” means information, however obtained or recorded, that:

(A) relates to a security, an issuer, a market for a security, or governmental action reasonably likely to affect any of them;

(B) has not been disseminated to the investing public;

(C) a reasonable investor would consider important in deciding whether to purchase or sell the security; and

(D) a covered official obtained by reason of the official’s position or in the performance of official duties, including information obtained from another government.

(9) “Profit gained or loss avoided” means the difference between the price at which the security was purchased or sold and its trading price within a reasonable period after public dissemination of the material nonpublic governmental information, together with any gain realized or loss avoided on any option or security-based swap, as determined by the trier of fact.

(10) “Public entity” means this state or a political subdivision, agency, authority, or instrumentality of this state.

(11) “Purchase” and “sale” include short sales and the entry into, exercise, assignment, or termination of any option or security-based swap.

(12) “Qualified blind trust” means a trust meeting the requirements of 5 U.S.C. 13104(f) or of [STATE ETHICS ACT], under which an independent trustee controls the assets and communicates no holdings to the official.

(13) “Security” has the meaning given in [STATE SECURITIES ACT], and includes any option, warrant, or security-based swap referencing a security. For purposes of this act, “security” also includes any commodity or digital asset, and any spot contract or option referencing one, but does not include any contract of sale of a commodity for future delivery, any option on such a

contract, or any swap, within the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 2.

SECTION 4. DUTY OF TRUST AND CONFIDENCE.

A covered official owes a duty of trust and confidence with respect to material nonpublic governmental information, and use of such information for the official's own benefit, or for the benefit of any other person, in connection with the purchase or sale of a security breaches the duty. For an official of a public entity, this section declares the duty, owed to the public entity and to the public. For every other covered official, the duty under this section is each duty of trust and confidence with respect to such information that arises under the law of the government the official serves, and this act attaches its remedies to trading and communication in breach of any such duty. The duty continues after the official leaves office as to information obtained during service.

SECTION 5. PROHIBITED CONDUCT.

(a) TRADING. A covered official shall not purchase or sell any security while aware of material nonpublic governmental information relating to the security, the issuer of the security, or the market for the security.

(b) ATTRIBUTION. A purchase or sale by a covered person is attributed to the covered official unless the official proves that the official neither directed nor suggested the transaction and did not communicate material nonpublic governmental information in connection with the transaction.

(c) COMMUNICATION. A covered official shall not communicate material nonpublic governmental information to any person, directly or indirectly, when it is reasonably foreseeable that the person will purchase or sell a security while aware of the information or will further communicate the information for that purpose. Liability under this subsection does not require proof that the official received or expected a personal benefit.

(d) TRADING ON COMMUNICATED INFORMATION. A person shall not purchase or sell a security while aware of material nonpublic governmental information that the person knows, consciously avoids knowing, or recklessly disregards was obtained, directly or indirectly, through a covered official's breach of the duty stated in section 4.

(e) FRAUDULENT PRACTICES. A covered official shall not, in connection with the purchase or sale of any security, employ any deception, misrepresentation, concealment, suppression, false pretense, or false promise. In any civil action or proceeding under sections 8 through 11 of this act, proof of intent to defraud, of reliance, or of damages is not required to establish a violation of this section.

SECTION 6. PRESUMPTION OF AWARENESS; SHORT-SWING PROFITS.

(a) PRESUMPTION. Proof that a covered official had access to material nonpublic governmental information concerning a security or its issuer, and that the official or a covered person purchased or sold that security within [90] days after the access, establishes a rebuttable presumption that the transaction occurred while the official was aware of the information. The official may rebut the presumption by a preponderance of the evidence. The presumption does not apply to a transaction, or a series of related transactions, of $[1,000] or less.

(b) SHORT-SWING PROFITS. Any profit realized by a covered official or a covered person from any purchase and sale, or any sale and purchase, of any security within any period of less than six months inures to and is recoverable by this state for deposit in the Fund, without proof of awareness of material nonpublic governmental information, of use of such information, or of intent. Transactions exempt under section 7 are excluded. The attorney general, or any person on behalf of the state, may sue to recover the profit. The attorney general may intervene in an action a person brings under this subsection and conduct it. A person who brings a successful action receives [20] percent of the recovery together with reasonable attorney's fees and costs.

SECTION 7. SAFE HARBORS.

Sections 5(a), 5(b), and 6 do not apply to:

(1) a transaction within a qualified blind trust;

(2) a purchase or sale of shares of a diversified, publicly offered investment fund that is not concentrated in an industry or sector within the covered official's duties and over whose holdings the official exercises no control, or of a direct obligation of the United States or of this state;

(3) a transaction executed under a written plan that the official adopted in good faith before obtaining the material nonpublic governmental information, that specifies the amounts, prices, and dates of transactions or a formula for determining them, that the official did not adopt or modify while aware of material nonpublic governmental information, that provides for no transaction earlier than [120] days after adoption, and that the official filed with the [STATE ETHICS COMMISSION] within [5] business days after adoption; and

(4) a divestiture required by court order, by statute, or by a written ethics agreement, executed as directed.

SECTION 8. PRIVATE CIVIL ACTIONS.

(a) CONTEMPORANEOUS TRADERS. A person who executed a contemporaneous transaction may bring a civil action against any person who violated section 5 and against any person jointly liable under section 9(d).

(b) HOLDER ACTIONS FOR DISGORGEMENT. A person who owns, or who owned at the time of a violation of section 5, any security of an issuer to which the material nonpublic governmental information related may bring a civil action to compel disgorgement to the Fund of the violator's profit gained or loss avoided. The attorney general may intervene in the action and conduct it. A prevailing plaintiff under this subsection receives [20] percent of the amount disgorged together with reasonable attorney's fees and costs.

(c) CREDIT. A court shall credit against disgorgement ordered under subsection (b) any amount the defendant proves it previously disgorged to the Fund or to the United States Securities and Exchange Commission for the same transactions.

SECTION 9. DAMAGES, FEES, AND JOINT LIABILITY.

(a) MEASURE. A prevailing plaintiff under section 8(a) recovers the greater of the plaintiff's actual damages or the plaintiff's pro rata share, among all persons who executed contemporaneous transactions, of the defendant's profit gained or loss avoided.

(b) TREBLING; MINIMUM RECOVERY. The court shall treble the amount determined under subsection (a) where the defendant is a covered official or where the violation was knowing. Recovery for a prevailing plaintiff shall not be less than $[10,000].

(c) PUNITIVE DAMAGES. Upon clear and convincing evidence of a willful violation, the trier of fact may award punitive damages. [Punitive damages under this act are not subject to the limitation in (CITE TO STATE PUNITIVE DAMAGES CAP).]

(d) JOINT AND SEVERAL LIABILITY. A covered official who violates section 5(c) and each person who violates section 5(d) in the chain of communication are jointly and severally liable for the full profit gained or loss avoided by all persons in the chain.

(e) FEES AND COSTS. The court shall award a prevailing plaintiff reasonable attorney's fees and costs. A prevailing defendant may recover fees only upon a finding that the action was frivolous, unreasonable, or without foundation.

(f) [OPTIONAL AGGREGATE LIMIT. Aggregate awards under subsections (a) through (c) against a single defendant arising from the same violation shall not exceed [ten] times the profit gained or loss avoided.]

SECTION 10. INVESTIGATION AND ENFORCEMENT BY THE ATTORNEY GENERAL.

(a) INVESTIGATION. The attorney general may investigate a suspected violation of this act on the attorney general's own initiative or on complaint, before filing any action. In aid of an investigation, the attorney general may administer oaths, subpoena witnesses, and compel the production of documents, communications, trading records, and data wherever located.

Disobedience of a subpoena is punishable as contempt. A natural person may not be excused from testifying or from producing records on the ground that doing so would incriminate that person, but testimony or records compelled over an assertion of the privilege against self-incrimination, and evidence derived from them, may not be used against that person in any criminal case except a prosecution for perjury or contempt committed in the proceeding. Investigative materials remain confidential until an action is filed, except that the attorney general may share them with other law enforcement and regulatory agencies.

(b) CIVIL ENFORCEMENT. The attorney general may bring a civil action for a temporary or permanent injunction, appointment of a receiver, restitution, disgorgement with prejudgment interest, and civil penalties under section 11. Proof of scienter, reliance, or damages is not required for relief under this subsection.

(c) CRIMINAL AUTHORITY. The attorney general and the [district attorney or county prosecutor] of any county in which venue lies under section 13 have concurrent authority to prosecute offenses under section 12.

SECTION 11. DISGORGEMENT AND CIVIL PENALTIES.

(a) DISGORGEMENT. In an action by the attorney general, the court shall order disgorgement of the full profit gained or loss avoided, with prejudgment interest at [the statutory judgment rate].

(b) CIVIL PENALTY. The court shall impose a civil penalty for each violation of section 5. Each purchase, each sale, and each communication in violation of section 5 is a separate violation. The penalty for each violation shall not exceed the greater of three times the profit gained or loss avoided or $[1,000,000] for a natural person and $[2,500,000] for any other person. Where the defendant is a covered official, the penalty for each violation shall not be less than the profit gained or loss avoided.

(c) DEPOSIT. Amounts recovered under this section shall be deposited in the Fund.

SECTION 12. CRIMINAL OFFENSES.

(a) OFFENSE. A person who violates section 5 commits an offense.

(b) GRADING. Without proof of intent to defraud, an offense under subsection (a) is a [class A misdemeanor]. With intent to defraud, or with knowledge that the information was material nonpublic governmental information, the offense is graded by the profit gained or loss avoided: less than $10,000, a [class E felony]; $10,000 or more but less than $100,000, a [class D felony]; $100,000 or more but less than $1,000,000, a [class C felony]; $1,000,000 or more, a [class B felony].

(c) FINES. Notwithstanding [GENERAL CRIMINAL FINE CEILING], the sentencing court may impose a fine of up to the greater of three times the gross gain from the offense or $[5,000,000] for a natural person and $[25,000,000] for any other person.

(d) EXCLUSION; PROOF. No criminal liability arises from section 6(b) standing alone. The attribution rule of section 5(b) and the presumption of section 6(a) do not apply in a prosecution under this section, and each element of an offense must be proven beyond a reasonable doubt without their aid.

(e) RESTITUTION. The sentencing court shall order restitution to identifiable victims, and any remaining forfeited gain shall be deposited in the Fund.

SECTION 13. JURISDICTION AND VENUE.

(a) JURISDICTION. A person is subject to prosecution and to civil suit in this state for conduct prohibited by this act occurring wholly or partly outside this state if:

(1) any element of the violation, or a result of the violation, occurred within this state;

(2) a party on the opposite side of the violative transaction, or any person who executed a contemporaneous transaction, resided or maintained a principal place of business in this state at the time of the violation;

(3) any person injured by the violation resided or maintained a principal place of business in this state at the time of the violation;

(4) the issuer of the security is organized under the laws of this state or maintains its principal place of business in this state; or

(5) an order was placed from, routed through, received in, or executed through equipment or facilities located in this state.

(b) VENUE. Venue lies in any county in which a person described in subsection (a)(2) or (a)(3) resided or maintained a principal place of business at the time of the violation, in the county of the issuer’s principal place of business, or in [the county of the seat of government].

(c) PERSONAL JURISDICTION. Conduct described in subsection (a) constitutes the transaction of business and the commission of a tortious act within this state for purposes of [STATE LONG-ARM STATUTE], and the courts of this state may exercise personal jurisdiction over the violator to the limits of the constitutions of this state and of the United States.

SECTION 14. WHISTLEBLOWER AWARDS AND PROTECTIONS.

(a) AWARDS. A person who voluntarily provides original information that leads to the collection of monetary sanctions exceeding $[100,000] under this act shall receive an award of not less than 10 percent and not more than 30 percent of the amounts collected, paid from the Fund, in an

amount the attorney general determines based on the significance of the information and the assistance provided.

(b) RETALIATION PROHIBITED. No employer may discharge, demote, suspend, threaten, harass, or otherwise discriminate against a person for providing information under this act, assisting an investigation or action under this act, or testifying in a proceeding under this act. An aggrieved person may bring a civil action for reinstatement, two times back pay with interest, compensation for special damages, and reasonable attorney's fees and costs.

(c) CONFIDENTIALITY. The attorney general shall keep the identity of a person providing information confidential to the extent the law of this state permits.

SECTION 15. ACTIONS IN THE NAME OF THE STATE BY PRIVATE PERSONS. [OPTIONAL]

(a) FILING. A person may bring a civil action for a violation of this act in the name of the state. The complaint shall be filed in camera and under seal, shall remain under seal for at least 60 days, and shall be served on the attorney general together with a written disclosure of the material evidence the person possesses.

(b) ELECTION. Within 60 days, extendable for good cause shown, the attorney general may intervene and conduct the action or may decline, in which case the person may proceed.

(c) SHARES. If the attorney general conducts the action, the person receives 15 to 25 percent of the proceeds. If the person conducts the action, the person receives 25 to 30 percent of the proceeds. In either case, a prevailing person also receives reasonable attorney's fees and costs, and the balance of the proceeds is deposited in the Fund.

(d) BARS. No action may proceed under this section based on allegations that are the subject of a pending proceeding by the state or the attorney general, or based on publicly disclosed allegations unless the person is an original source of the information. The procedural rules of [STATE FALSE CLAIMS ACT] govern actions under this section to the extent they are not inconsistent with this act.

SECTION 16. PENSION FORFEITURE; DEBARMENT.

(a) FORFEITURE. A covered official who holds elective or appointive office under this state or a political subdivision of this state and who is convicted of a felony under section 12 forfeits pension and retirement benefits as provided in [STATE PENSION FORFEITURE ACT], and forfeited amounts shall be applied first to restitution and disgorgement obligations under this act. This subsection does not apply to an officer, employee, or staff member serving in a civil service position, whose benefits remain governed by [STATE PENSION FORFEITURE ACT] according to its own terms.

(b) DEBARMENT. A person convicted under section 12 is disqualified from contracting with any public entity of this state for [5] years after conviction, and the conviction shall be referred to any licensing board with authority over the person as a possible ground for discipline.

SECTION 17. INDEMNIFICATION AND INSURANCE PROHIBITED.

No public entity of this state shall indemnify or reimburse any person for, or purchase insurance on any person's behalf against, disgorgement, civil penalties, punitive damages, restitution, or criminal fines imposed under this act. Any agreement to the contrary is void as against public policy.

SECTION 18. LIMITATIONS; TOLLING.

(a) PRIVATE ACTIONS. An action under section 8 shall be brought within the later of [3] years after the plaintiff discovered, or reasonably should have discovered, the facts constituting the violation, or [8] years after the violation.

(b) STATE CIVIL ACTIONS. An action by the attorney general under sections 10 and 11 shall be brought within [10] years after the violation.

(c) PROSECUTIONS. A prosecution under section 12 shall be commenced within [7] years after the offense.

(d) TOLLING. Each limitation period in this section is tolled during any period of fraudulent concealment of the violation [and during the defendant's continuous service in the office through which the material nonpublic governmental information was obtained].

SECTION 19. SECURITIES VICTIMS RESTITUTION FUND.

(a) ESTABLISHMENT. The Securities Victims Restitution Fund is established in the state treasury. The Fund receives disgorgement, civil penalties, short-swing recoveries under section 6(b), and criminal fines net of restitution collected under this act.

(b) DISTRIBUTION. The attorney general shall establish a claims process to distribute Fund amounts attributable to a violation to persons injured by that violation. Amounts unclaimed [3] years after deposit transfer to [the general fund] [an investor protection and education account].

(c) PAYMENTS. Awards under sections 6(b), 8(b), 14, and 15 are paid from the Fund.

SECTION 20. CONSTRUCTION; SEVERABILITY; RELATION TO OTHER LAW.

(a) This act is remedial and shall be liberally construed to effect its purposes.

(b) The rights and remedies provided by this act are cumulative with those provided by [STATE SECURITIES ACT] and by any other law.

(c) If any provision of this act, or the application of any provision to any person or circumstance, is held invalid or preempted, the remainder of the act, and the application of the provision to other persons and circumstances, are unaffected.

(d) Nothing in this act regulates the registration or offering of securities. This act addresses fraud, deceit, and breach of duty in connection with securities transactions.

SECTION 21. EFFECTIVE DATE; APPLICABILITY.

This act takes effect on [DATE] and applies to purchases, sales, and communications occurring on or after that date. Section 6(b) applies only where both matched transactions occur on or after that date.

DRAFTER'S NOTES

Section 2. Each finding is supported by primary authority: the STOCK Act, Public Law 112-105; section 16(b) of the Securities Exchange Act, 15 U.S.C. 78p; the Martin Act, N.Y. General Business Law article 23-A, whose no-scienter civil standard dates to People v. Federated Radio Corp., 244 N.Y. 33 (1926); Virginia Code section 19.2-249.2, which places venue for computer crimes in the county where the victim owner has its principal place of business, where any act occurred, or through which access was routed; Strassheim v. Daily, 221 U.S. 280 (1911); and the NSMIA antifraud savings clause, 15 U.S.C. 77r(c).

Section 3. The definition of material nonpublic governmental information adapts the STOCK Act's phrase for information derived from an official's position or gained in the performance of official duties. The awareness standard adapts SEC Rule 10b5-1(b), 17 C.F.R. 240.10b5-1. The contemporaneous transaction definition gives statutory content to the standing class Congress created in Exchange Act section 20A, 15 U.S.C. 78t-1. The exclusion of exchange-traded futures reflects the exclusive federal jurisdiction provision of the Commodity Exchange Act, 7 U.S.C. 2; a state statute reaching those contracts would face preemption, so the act covers securities and security-based swaps only.

Section 4. The duty codifies STOCK Act section 4(b)(2), which affirms a duty of trust and confidence owed to Congress, the United States Government, and the citizens of the United States, and extends the same duty to state and local officials. The misappropriation theory the duty rests on is settled federal law under United States v. O'Hagan, 521 U.S. 642 (1997).

Section 5. Subsections (a) and (d) codify insider trading liability as courts have built it under Exchange Act section 10(b) and Rule 10b-5. Subsection (c) is a flagged departure: it drops the personal benefit element of Dirks v. SEC, 463 U.S. 646 (1983), as reaffirmed in Salman v. United States, 580 U.S. 39 (2016), and follows instead the Insider Trading Prohibition Act, H.R. 2655, which the House of Representatives passed in 2021 with a knowing, consciously avoided, or recklessly disregarded standard for downstream traders. A legislature may define the elements

of a state cause of action without adopting judge-made limits on the federal cause of action. Subsection (e) transplants the Martin Act's fraudulent practices catchall, N.Y. General Business Law 352-c, together with the no-scienter rule of Federated Radio.

Section 6. Subsection (b) answers the problem of suspected but unprovable use of inside information the same way Congress answered it in 1934: strict liability for short-swing profits under section 16(b). The departures are flagged. Any person may sue for the state without first demanding that the attorney general sue; section 16(b) lets a security holder sue only when the issuer fails to sue within 60 days after request. The class of insiders becomes covered officials rather than corporate officers, directors, and ten percent holders, and the recovery goes to the state Fund rather than to the issuer, because the principal whose information was converted is the public. Subsection (a) is a burden-shifting presumption built from the predicate facts of access and a closely timed trade; the official rebuts by ordinary preponderance.

Section 7. The qualified blind trust standard comes from the Ethics in Government Act, 5 U.S.C. 13104(f). The diversified fund exception parallels the excepted investment fund concept in the same statute. The trading plan safe harbor adapts Rule 10b5-1(c) as amended in 2022, including a cooling-off period, and adds public filing with the state ethics commission.

Section 8. Subsection (a) creates the private action the Martin Act lacks, a gap the New York Court of Appeals confirmed in CPC International Inc. v. McKesson Corp., 70 N.Y.2d 268 (1987), and models it on section 20A, 15 U.S.C. 78t-1. Subsection (b) extends the 16(b) shareholder suit to give any investor in the affected issuer a route to force disgorgement, with a percentage award in place of the common-fund fee doctrine that sustains 16(b) litigation. The holder sues without first demanding that the attorney general sue, and the attorney general may intervene and conduct the action.

Section 9. Trebling follows Clayton Act section 4, 15 U.S.C. 15, and civil RICO, 18 U.S.C. 1964(c). The statutory minimum recovery follows the model of 47 U.S.C. 227(b)(3). One-way fee shifting follows 42 U.S.C. 1988 and Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978). Two departures are flagged: the act removes section 20A's cap limiting total private recovery to the defendant's profit and removes its offset for amounts disgorged to the SEC, so private damages, state penalties, and disgorgement stack. Constitutional review of punitive awards under State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003), is the reason subsection (f) offers an optional aggregate limit.

Section 10. The investigative architecture is the Martin Act's: pre-suit subpoena power under section 352, injunctions and restitution under section 353, receivership under section 353-a, and criminal authority under section 358. Disgorgement as a Martin Act remedy was sustained in People v. Greenberg, 27 N.Y.3d 490 (2016). Concurrent county prosecutor authority is a drafting choice for enforcement redundancy and mirrors the concurrent structures common in state computer crime codes.

Section 11. The penalty structure adapts Exchange Act section 21A, 15 U.S.C. 78u-1, which authorizes a civil penalty of up to three times the profit gained or loss avoided. The dollar alternatives adapt 21A's controlling person figures. The floor for covered officials, a penalty of no less than the full gain on top of disgorgement of the full gain, is a flagged enhancement grounded in the breach of public trust.

Section 12. The intent-based grading split comes from Martin Act section 352-c, which makes securities fraud a misdemeanor without proof of intent to defraud and a felony with that proof. The dollar tiers follow the structure of state theft grading. The alternative fine adapts 18 U.S.C. 3571(d), raised from twice the gross gain to three times, a flagged increase. Subsection (d) keeps the strict liability rule of section 6(b) civil only.

Section 13. Subsection (a)(1) is Model Penal Code section 1.03(1)(a), which reaches offenses where either conduct or a result element occurs in the state. Subsections (a)(2) through (a)(5) adapt the victim-location and routing venue rules of Virginia Code section 19.2-249.2 to securities transactions. Strassheim supplies the constitutional basis for prosecuting out-of-state conduct with in-state effects, and Calder v. Jones, 465 U.S. 783 (1984), supplies the effects test for civil personal jurisdiction.

Section 14. The award band of 10 to 30 percent of collected sanctions comes from Dodd-Frank section 922, 15 U.S.C. 78u-6. The collection threshold is lowered from the federal $1,000,000 to a bracketed state figure because state cases will run smaller. The retaliation remedy blends 78u-6(h) with the False Claims Act, 31 U.S.C. 3730(h).

Section 15. The qui tam mechanics, including the seal, the intervention election, and the 15 to 25 and 25 to 30 percent relator shares, are the False Claims Act's, 31 U.S.C. 3730(b) through (e). This article is marked optional because it is the act's least tested piece in the securities context. The Securities Litigation Uniform Standards Act, 15 U.S.C. 78bb(f), preempts certain state-law class actions involving nationally traded securities but excludes actions in which a state or political subdivision is the plaintiff. An action filed in the name of the state under this section is designed for that exclusion, and the private remedies in section 8 are structured as individual, demand-based actions rather than class actions for the same reason.

Section 16. Pension forfeiture follows the Pennsylvania Public Employee Pension Forfeiture Act, 43 Pa. Stat. sections 1311 through 1315, and the 2017 amendment to the New York Constitution permitting reduction or revocation of pensions for officials convicted of felonies related to their duties. Federal pensions are beyond state reach, so subsection (a) is limited to state and local officials.

Section 17. The bar on indemnification and insurance follows the settled exclusion of intentional wrongdoing from public indemnification statutes, for example N.Y. Public Officers Law section 18, and the public policy against insuring intentional misconduct. Without this section, taxpayers would pay the penalties the act imposes on their own officials.

Section 18. The private limitation structure lengthens the discovery and repose periods of 28 U.S.C. 1658(b). The ten-year state enforcement period follows the ten-year disgorgement period Congress added at 15 U.S.C. 78u(d)(8). Tolling for fraudulent concealment is settled doctrine. The bracketed tolling during the defendant’s continued tenure in the office is novel and flagged; its analogs are the adverse domination doctrine and equitable estoppel against defendants who control the channels of disclosure.

Section 19. The Fund adapts the Fair Funds mechanism of Sarbanes-Oxley section 308, 15 U.S.C. 7246, which directs penalties and disgorgement to defrauded investors before any residue reaches the treasury.

Section 20. Liberal remedial construction restates the Martin Act rule of Federated Radio. The application-severability language in subsection (c) matters here more than in most acts, because a court that found one application preempted, for example a particular private claim involving a nationally traded security, would sever that application and leave state enforcement, qui tam actions, and the remaining private claims intact.

Standing architecture. The instruction that any harmed investor be able to sue is implemented on three tracks with different proof burdens. A contemporaneous trader proves a violation and recovers treble damages with a statutory floor under sections 8(a) and 9. Any holder of the affected issuer’s securities can force disgorgement to the Fund and keep a percentage under section 8(b), or recover short-swing profits with no proof of use at all under section 6(b). A citizen with original information can prosecute the state’s civil case and keep up to 30 percent under section 15.

REVISION NOTES (AUGUST 2026)

Section 3(4) defines the covered class by function, any public office, employment, or engagement of any government, domestic or foreign, without enumerating levels of government, on the drafting pattern of statutes that define an offense by conduct without listing the actor’s employer. The functional form follows enacted law: the Model Penal Code’s definition of “public servant” reaches any person participating as adviser or consultant in performing a governmental function, and state codes adopting it, including New York Penal Law section 10.00(15), have applied it for decades. The functional form strengthens the general-applicability answer to any attainder challenge and reaches advisers and contractors engaged to perform or advise on governmental functions, a class the enumerated version missed. Coverage attaches by position, so the section 6(b) matched-trade rule operates without any proof about information. Section 3(13) extends coverage to commodities and digital assets in spot transactions, following the scope of New York General Business Law section 352, which reaches securities and commodities and which the New York attorney general has applied to digital-asset trading. The exclusion for futures, options on futures, and swaps within exclusive Commodity Futures Trading Commission jurisdiction under 7 U.S.C. 2 remains. Section 6(a) adds a de minimis floor

of $[1,000] with aggregation of related transactions against structuring. Section 12(d) confines the section 5(b) attribution rule and the section 6(a) presumption to civil proceedings, following Sandstrom v. Montana, 442 U.S. 510 (1979), and County Court of Ulster County v. Allen, 442 U.S. 140 (1979). Section 16(a) applies pension forfeiture to elective and appointive officeholders of this state and its subdivisions and leaves civil-service personnel under the state's existing forfeiture law.

SECOND REVISION (AUGUST 2026, VET PASS)

Section 4 is restructured on a recognition model: for officials of this state and its subdivisions the section declares the duty, and for all other covered officials the act attaches its remedies to duties of trust and confidence already arising under the law of the government served. The restructure removes any claim that this state defines the internal obligations of another sovereign's officers; the state attaches remedies to breaches of duties that other law creates, the mirror of how misappropriation doctrine borrows duties from state law. Section 6(b) applies to any security as defined in section 3(13) so the automatic rule reaches the digital assets the definition covers, a flagged departure from section 16(b)'s equity-security limit. Section 10(a) adds use and derivative-use immunity for compelled testimony on the standard of Kastigar v. United States, 406 U.S. 441 (1972), following Martin Act immunity practice, because investigation of individuals fails without an immunity mechanism once the privilege is asserted.

THIRD REVISION (NOVEMBER 2026)

Sections 6(b) and 8(b) no longer condition a private action on a demand to the attorney general. Any person may sue at once, and the attorney general may intervene and conduct the action. Section 4 states the duty of every other covered official by reference to the law of the government the official serves.