

111TH CONGRESS  
1ST SESSION

# S. 1659

To enhance penalties for violations of securities protections that involve targeting seniors.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2009

Mr. CASEY (for himself, Mrs. GILLIBRAND, Mr. KOHL, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To enhance penalties for violations of securities protections that involve targeting seniors.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Senior Investor Protec-  
5       tions Enhancement Act of 2009”.

6       **SEC. 2. DEFINITIONS.**

7       (a) IN GENERAL.—In this Act, the following defini-  
8       tions shall apply:

9               (1) SENIOR.—The term “senior” means an in-  
10       dividual who is 62 years of age or older.

1           (2) SECURITIES LAWS.—The term “securities  
2       laws” means the Securities Act of 1933 (15 U.S.C.  
3       77b et seq.), the Securities Exchange Act of 1934  
4       (15 U.S.C. 78a et seq.), the Investment Company  
5       Act of 1940 (15 U.S.C. 80a et seq.), and the Invest-  
6       ment Advisers Act of 1940 (15 U.S.C. 80b et seq.).

7       (b) APPLICATION OF SENIOR DEFINITION.—

8           (1) SECURITIES ACT OF 1933.—Section 2(a) of  
9       the Securities Act of 1933 (15 U.S.C. 77b(a)) is  
10      amended by adding at the end the following:

11           “(17) The term ‘senior’ means an individual  
12      who is 62 years of age or older.”.

13           (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
14      tion 3(a) of the Securities Exchange Act of 1934  
15      (15 U.S.C. 78c(a)) is amended by adding at the end  
16      the following:

17           “(65) The term ‘senior’ means an individual  
18      who is 62 years of age or older.”.

19           (3) INVESTMENT COMPANY ACT OF 1940.—Sec-  
20      tion 2(a) of the Investment Company Act of 1940  
21      (15 U.S.C. 80a–2(a)) is amended by adding at the  
22      end the following:

23           “(54) The term ‘senior’ means an individual  
24      who is 62 years of age or older.”.

1           (4) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
 2           tion 202(a) of the Investment Advisers Act of 1940  
 3           (15 U.S.C. 80b–2(a)) is amended by adding at the  
 4           end the following:

5           “(29) The term ‘senior’ means an individual  
 6           who is 62 years of age or older.”.

7   **SEC. 3. ENHANCED PENALTIES FOR VIOLATIONS OF SECURITIES ACT OF 1933.**

9           (a) CIVIL ACTIONS.—Section 20(d)(2) of the Securi-  
 10          ties Act of 1933 (15 U.S.C. 77t(d)(2)) is amended by add-  
 11          ing at the end the following:

12           “(D) SPECIAL RULE FOR SENIORS.—Not-  
 13          withstanding subparagraphs (A), (B), and (C),  
 14          if a person commits a violation described in  
 15          paragraph (1), and the violation is directed to-  
 16          ward, targets, or is committed against a person  
 17          who, at the time of the violation, is a senior, the  
 18          Commission, in addition to any other applicable  
 19          civil penalty, may impose a civil penalty of not  
 20          more than \$50,000 for each such violation.”.

21          (b) OTHER VIOLATIONS.—Section 24 of the Securi-  
 22          ties Act of 1933 (15 U.S.C. 77x) is amended—

23           (1) by inserting “(a) IN GENERAL.—” before  
 24          “Any person”; and

25           (2) by adding at the end the following:

1       “(b) SPECIAL RULE FOR SENIORS.—Notwith-  
 2 standing subsection (a), if a person commits a violation  
 3 described in subsection (a), and the violation is directed  
 4 toward, targets, or is committed against a person who, at  
 5 the time of the violation is a senior, the Commission, in  
 6 addition to any other applicable civil penalty, may impose  
 7 a civil penalty of not more than \$50,000 for each such  
 8 violation.”.

9       **SEC. 4. ENHANCED PENALTIES FOR VIOLATIONS OF SECU-**  
 10                                   **RITIES ACT OF 1934.**

11       (a) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Se-  
 12 curities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B))  
 13 is amended by adding at the end the following:

14                                   “(iv) SPECIAL RULE FOR SENIORS.—  
 15                                   Notwithstanding clauses (i), (ii), and (iii),  
 16                                   if a person commits a violation described  
 17                                   in subparagraph (A), and the violation is  
 18                                   directed toward, targets, or is committed  
 19                                   against a person who, at the time of the  
 20                                   violation, is a senior, the Commission, in  
 21                                   addition to any other applicable civil pen-  
 22                                   alty, may impose a civil penalty of not  
 23                                   more than \$50,000 for each such viola-  
 24                                   tion.”.

1 (b) WILLFUL VIOLATIONS.—Section 21B(b) of the  
2 Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b))  
3 is amended by adding at the end the following:

4 “(4) SPECIAL RULE FOR SENIORS.—Notwith-  
5 standing paragraphs (1), (2), and (3), if a person  
6 engages in an act or omission described in sub-  
7 section (a), and the violation is directed toward, tar-  
8 gets, or is committed against a person who, at the  
9 time of the violation, is a senior, the Commission, in  
10 addition to any other applicable civil penalty, may  
11 impose a civil penalty of not more than \$50,000 for  
12 each such violation.”.

13 (c) OTHER VIOLATIONS.—Section 32 of the Securi-  
14 ties Exchange Act of 1934 (15 U.S.C. 78ff) is amended  
15 by adding at the end the following:

16 “(d) SPECIAL RULE FOR SENIORS.—Notwith-  
17 standing subsections (a), (b), and (c), if a person commits  
18 a violation described in this section, and the violation is  
19 directed toward, targets, or is committed against a person,  
20 who at the time of the violation, is a senior, the Commis-  
21 sion, in addition to any other applicable civil penalty, may  
22 impose a civil penalty of not more than \$50,000 for each  
23 such violation.”.

1 **SEC. 5. ENHANCED PENALTIES FOR VIOLATIONS OF IN-**  
 2 **VESTMENT COMPANY ACT OF 1940.**

3 (a) WILLFUL VIOLATIONS.—Section 9(d)(2) of the  
 4 Investment Company Act of 1940 (15 U.S.C. 80a–  
 5 9(d)(2)) is amended by adding at the end the following:

6 “(D) SPECIAL RULE FOR SENIORS.—Not-  
 7 withstanding subparagraphs (A), (B), and (C),  
 8 if a person engages in an act or omission de-  
 9 scribed in paragraph (1), and the violation is  
 10 directed toward, targets, or is committed  
 11 against a person, who, at the time of the viola-  
 12 tion, is a senior, the Commission, in addition to  
 13 any other applicable civil penalty, may impose a  
 14 civil penalty of not more than \$50,000 for each  
 15 such violation.”.

16 (b) CIVIL ACTIONS.—Section 42(e)(2) of the Invest-  
 17 ment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is  
 18 amended by adding at the end the following:

19 “(D) SPECIAL RULE FOR SENIORS.—Not-  
 20 withstanding subparagraphs (A), (B), and (C),  
 21 if a person commits a violation described in  
 22 paragraph (1), and the violation is directed to-  
 23 ward, targets, or is committed against a person  
 24 who, at the time of the violation, is senior, the  
 25 Commission, in addition to any other applicable

1 civil penalty, may impose a civil penalty not  
 2 more than \$50,000 for each such violation.”.

3 (c) OTHER VIOLATIONS.—Section 49 of the Invest-  
 4 ment Company Act of 1940 (15 U.S.C. 80a–48) is amend-  
 5 ed—

6 (1) by inserting “(a) IN GENERAL.—” before  
 7 “Any person”; and

8 (2) by adding at the end the following:

9 “(b) SPECIAL RULE FOR SENIORS.—Notwith-  
 10 standing subsection (a), if a person commits a violation  
 11 described in subsection (a), and the violation is directed  
 12 toward, targets, or is committed against a person who, at  
 13 the time of the violation, is a senior, the Commission, in  
 14 addition to any other applicable civil penalty, may impose  
 15 a civil penalty of not more than \$50,000 for each such  
 16 violation.”.

17 **SEC. 6. ENHANCED PENALTIES FOR VIOLATIONS OF IN-**  
 18 **VESTMENT ADVISERS ACT OF 1940.**

19 (a) WILLFUL VIOLATIONS.—Section 203(i)(2) of the  
 20 Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2))  
 21 is amended by adding at the end the following:

22 “(D) SPECIAL RULE FOR SENIORS.—Not-  
 23 withstanding subparagraphs (A), (B), and (C),  
 24 if a person engages in an act or omission de-  
 25 scribed in paragraph (1), and the violation is

1 directed toward, targets, or is committed  
 2 against a person who, at the time of the viola-  
 3 tion, is a senior, the Commission, in addition to  
 4 any other applicable civil penalty, may impose a  
 5 civil penalty of not more than \$50,000 for each  
 6 such violation.”.

7 (b) CIVIL ACTIONS.—Section 209(e)(2) of the Invest-  
 8 ment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(2)) is  
 9 amended by adding at the end the following:

10 “(D) SPECIAL RULE FOR SENIORS.—Not-  
 11 withstanding subparagraphs (A), (B), and (C),  
 12 if a person commits a violation under this title,  
 13 and the violation is directed toward, targets, or  
 14 is committed against a person who, at the time  
 15 of the violation, is a senior, the Commission, in  
 16 addition to any other applicable civil penalty,  
 17 may impose a civil penalty of not more than  
 18 \$50,000 for each such violation.”.

19 (c) OTHER VIOLATIONS.—Section 217 of the Invest-  
 20 ment Advisers Act of 1940 (15 U.S.C. 80b–17) is amend-  
 21 ed—

22 (1) by inserting “(a) IN GENERAL.—” before  
 23 “Any person”; and

24 (2) by adding at the end the following:

1       “(b) SPECIAL RULE FOR SENIORS.—Notwith-  
 2 standing subsection (a), if a person commits a violation  
 3 described in subsection (a), and the violation is directed  
 4 toward, targets, or is committed against a person who, at  
 5 the time of the violation, is a senior, the Commission, in  
 6 addition to any other applicable civil penalty, may impose  
 7 a civil penalty of not more than \$50,000 for each such  
 8 violation.”.

9       **SEC. 7. DIRECTIVE TO THE UNITED STATES SENTENCING**  
 10                                   **COMMISSION.**

11       (a) IN GENERAL.—Pursuant to its authority under  
 12 section 994(p) of title 28, United States Code, and in ac-  
 13 cordance with this section, the United States Sentencing  
 14 Commission shall review and amend the Federal sen-  
 15 tencing guidelines and policy statements to ensure that the  
 16 guideline offense levels and enhancements appropriately  
 17 punish violations of the securities laws against seniors.

18       (b) REQUIREMENTS.—In carrying out this section,  
 19 the United States Sentencing Commission shall—

20               (1) ensure that section 2B1.1 and 2C1.1 of the  
 21 Federal sentencing guidelines (and any successors  
 22 thereto) apply to and punish offenses in which the  
 23 victim of a violation of the securities laws is a sen-  
 24 ior;

1           (2) ensure reasonable consistency with other  
2 relevant directives, provisions of the Federal sen-  
3 tencing guidelines, and statutory provisions;

4           (3) make any necessary and conforming  
5 changes to the Federal sentencing guidelines, in ac-  
6 cordance with the amendments made by this Act;  
7 and

8           (4) ensure that the Federal sentencing guide-  
9 lines adequately meet the purposes of sentencing set  
10 forth in section 3553(a)(2) of title 18, United States  
11 Code.

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