



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 315 (as introduced 3-24-21)
Sponsor: Senator Jim Runestad
Committee: Finance

Date Completed: 6-16-21

CONTENT

The bill would add Article 5A (Financial Exploitation of Specified Adults) to the Uniform Securities Act to do the following:

- **Allow a broker-dealer or investment advisor, under certain conditions, to place a temporary hold on a disbursement of funds or securities if the broker-dealer or investment advisor believed that financial exploitation of a specified adult had occurred, was occurring, had been attempted, or will be attempted.**
- **Require a broker-dealer or investment advisor who placed a temporary hold on a specified adult's account to establish and maintain written procedures reasonably designed to maintain compliance with proposed Article 5A.**
- **Require a broker-dealer to retain specified records related to compliance with Article 5A's provisions and require that those records be readily available to the Department of Licensing and Regulatory Affairs (LARA).**
- **Specify that Article 5A would not require a broker-dealer or investment advisor to place a temporary hold on a disbursement of funds or securities from the account of a specified adult.**
- **Define various terms, including "account", "financial exploitation", and "specified adult".**

The bill would take effect 90 days after its enactment.

Definitions

"Specified adult" would mean either of the following: 1) an individual who is 65 years of age or older, or 2) an individual who is 18 years of age or older and who the broker-dealer or investment advisor reasonably believes has a mental or physical impairment that render the individual unable to protect his or her own interests.

"Account" would mean any account with a broker-dealer or investment advisor for which a specified adult has the authority to transact business.

The bill would define "financial exploitation" as any of the following:

- The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities.
- Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to do either of the following: 1) obtain control through deception, intimidation, or undue influence, over the

specified adult's money, assets, or property; or 2) convert the specified adult's money, assets, or property.

Allowance for Temporary Holds on Disbursements of Funds

The bill would allow a broker-dealer or investment advisor to place a temporary hold on a disbursement of funds or securities from an account of a specified adult, or any other transaction concerning that account, if the broker-dealer or investment advisor reasonably believed that financial exploitation of the specified adult had occurred, was occurring, had been attempted, or will be attempted. ("Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Investment adviser" generally means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.)

Within two business days after the date that the broker-dealer or investment advisor first placed the temporary hold on the disbursement of funds or securities, or other transaction, the broker-dealer or investment advisor would need to provide notification, electronically or in writing, that was maintained as correspondence under the Act, of the reason for the temporary hold. The notification would have to be provided to all of the following:

- All parties who were authorized to transact business on the account, unless a party was unavailable or the broker-dealer or investment advisor reasonably believed that the party had engaged, was engaged, or will engage in the financial exploitation of the specified adult.
- Any individual who the specified adult has previously designated as authorized to receive information about the account, unless he or she was unavailable or the broker-dealer or investment advisor reasonably believed that the individual had engaged, was engaged, or will engage in the financial exploitation of the specified adult.

The broker-dealer or investment advisor would have to initiate an immediate internal review of the facts and circumstances that caused the broker-dealer or investment advisor to reasonably believe that the financial exploitation of the specified adult had occurred, was occurring, had been attempted, or will be attempted.

Conditions of a Temporary Hold Placed on an Account

A temporary hold authorized under the bill would expire not later than 15 business days after the date that the broker-dealer or investment advisor first placed the hold on the disbursement of funds or securities, or other transaction, unless otherwise terminated or extended by the Administrator (i.e., the Director of LARA), another agency of competent jurisdiction, a court of competent jurisdiction, or unless extended as specified below.

If the broker dealer's or investment advisor's internal review supported the reasonable belief that financial exploitation of the specified adult had occurred, was occurring, had been attempted, or will be attempted, a broker-dealer or investment advisor could extend a temporary hold for up to 10 business days following the original expiration date unless otherwise terminated or extended by the Administrator, other agency of competent jurisdiction, or a court of competent jurisdiction.

The Administrator would not be required to extend or terminate a temporary hold as authorized above.

Written Procedures and Records

Subject to Federal law and the Act's other recordkeeping requirements, a broker-dealer or investment advisor who took action under Article 5A would have to establish and maintain written procedures reasonably designed to achieve compliance with Article 5A, including procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of specified adults. These procedures would have to identify the title of each individual who was authorized to place, terminate, or extend a temporary hold on behalf of the broker-dealer or investment advisor under Article 5A. Only an individual who served in a supervisory, compliance, or legal capacity for the broker-dealer or investment advisor would be eligible for identification as an authorized individual for these purposes.

A broker-dealer or investment advisor would have to retain records related to compliance with the bill and ensure that those records were readily available to LARA on request. The retained records would need to include records of all of the following:

- Any requests for a disbursement or other transaction that a broker-dealer or investment advisor reasonably believed to constitute financial exploitation of a specified adult and the resulting temporary hold.
- Any finding of a reasonable belief that financial exploitation had occurred, was occurring, had been attempted, or will be attempted underlying a decision to place a temporary hold on a disbursement or other transaction.
- The name and title of any broker-dealer or investment advisor who authorized a temporary hold on a disbursement or other transaction.
- Any notifications to relevant parties pertaining to the temporary hold.
- Any internal review of the facts and circumstances conducted as specified above.

A broker-dealer or investment advisor would have to provide access to or copies of the records to State agencies charged with administering State adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records would need to include historical records as well as records relating to the most recent transaction or transactions that could comprise financial exploitation or suspected financial exploitation of a specified adult. All records made available to agencies or law enforcement would not be subject to the Freedom of Information Act. These provisions would not limit or otherwise impede the authority of the Administrator to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Optional Enforcement

Article 5A would not require a broker-dealer or investment advisor to place temporary holds on disbursements of funds or securities from the accounts of specified adults or other transactions concerning these accounts.

A broker-dealer or investment advisor who did rely on Article 5A would need to develop and document training policies or programs reasonably designed to ensure that the broker-dealer or investment advisor complied with Article 5A's requirements.

A broker-dealer's or investment advisor's reasonable belief that an individual who was 18 years of age or older had a mental or physical impairment that rendered him or her unable to protect his or her own interest could be based on the facts and circumstances observed in the broker-dealer's or investment advisor's business relationship with that individual.

FISCAL IMPACT

The bill would not have a significant fiscal impact on State or local units of government. Some additional costs could be incurred by LARA if temporary hold actions resulted in complaints to or investigations by the Department. However, these costs likely would be covered by existing appropriations. Local court systems also could experience increased caseloads related to the bill. The fiscal impact of any of these increases would depend upon the particular legal actions in question.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.