

FINANCIAL EXPLOITATION OF SPECIFIED ADULTS

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Senate Bill 315 (S-1) as passed by the Senate

Sponsor: Sen. Jim Runestad

House Committee: Financial Services

Senate Committee: Financial

Complete to 10-19-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 315 would add Article 5A (Financial Exploitation of Specified Adults) to the Uniform Securities Act to authorize broker-dealers and investment advisers to take certain actions, including placing a temporary hold on the disbursement of funds, to protect a *specified adult* from *financial exploitation*.

Specified adult would mean either of the following:

- An individual who is 65 years of age or older.
- An individual who is at least 18 years of age and who the broker-dealer or investment adviser reasonably believes has a mental or physical impairment that renders him or her unable to protect his or her own interests. (Such a reasonable belief could be based on the facts and circumstances observed in the broker-dealer's or investment adviser's business relationship with that individual.)

Financial exploitation would mean either 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 other authority regarding a specified adult) to do either of the following:
 - Obtain control, through deception, intimidation, or undue influence, over the specified adult's money, assets, or property.
 - Convert the specified adult's money, assets, or property.

Temporary hold

The bill would allow a broker-dealer or investment adviser 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 all of the following conditions were met:

- The broker-dealer or investment adviser reasonably believes that financial exploitation of the adult has occurred, is occurring, has been attempted, or will be attempted.
- Within two business days after the date the broker-dealer or investment adviser first placed the temporary hold, he or she provides notification, electronically or in writing, that is maintained as correspondence under the recordkeeping provisions of the act, of the reason for the temporary hold to all of the following:
 - All parties authorized to transact business on the account, unless a party is unavailable or the broker-dealer or investment adviser reasonably believes that

the party engaged, is engaged, or will engage in financial exploitation of the specified adult.

- Any individual the specified adult has previously authorized to receive information about the account, unless the individual is unavailable or the broker-dealer or investment adviser believes that he or she has engaged, is engaged, or will engage in financial exploitation of the specified adult.
- An *agency of competent jurisdiction*.
- The broker-dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused him or her to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

Agency of competent jurisdiction would mean an entity authorized to investigate or review suspicions of abuse or exploitation, including Adult Protective Services and law enforcement.

The bill would further provide that, if a broker-dealer or investment adviser reasonably believes that financial exploitation of a specified adult may have occurred, may have been attempted, or is being attempted, he or she may provide notification of that financial exploitation to any of the following:

- The administrator.
- An agency of competent jurisdiction.
- A reasonably associated individual, unless he or she is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in the financial exploitation of the specified adult.
- Any third party previously designated by the specified adult to receive information about the account, unless he or she is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in the financial exploitation of the specified adult.

A temporary hold would expire on either of the following:

- The day a broker-dealer or investment adviser determines that the disbursement or transaction will not result in financial exploitation of the specified adult.
- No later than 15 business days after the date it was first placed, unless the hold were otherwise terminated or extended by the Department of Licensing and Regulatory Affairs (LARA), by another agency of competent jurisdiction, or by a court of competent jurisdiction. However, if the broker-dealer's or investment adviser's internal review supported his or her reasonable belief as to the financial exploitation of the specified adult, he or she could extend a temporary hold for up to 40 business days, unless otherwise terminated or extended by LARA or another agency or court of competent jurisdiction. The provisions described in this paragraph would not require LARA to extend or terminate a temporary hold authorized under the bill.

The bill would not require a broker-dealer or investment adviser to place temporary holds on disbursements of funds or securities from the accounts of specified adults or other transactions concerning those accounts.

Procedures, policies, programs

A broker-dealer or investment adviser that took action under the bill would have to establish and maintain written procedures reasonably designed to achieve compliance with the bill, including those relating to the identification, escalation, and reporting of matters related to the financial exploitation of specified adults. The procedures would have to identify the title of each individual authorized to place, terminate, or extend a temporary hold on behalf of the broker-dealer or investment adviser. Only an individual serving the broker-dealer or investment adviser in a supervisory, compliance, legal, or senior or vulnerable investor protection capacity could be so authorized.

A broker-dealer or investment adviser that relied on the bill's provisions would have to develop and document training policies or programs reasonably designed to ensure that the broker-dealer or investment adviser complied with the bill's requirements.

Records availability

Subject to 15 USC 78o(i)(1) and 15 USC 80b-18a, and subject to the recordkeeping provisions of the act, the broker-dealer or investment adviser would have to retain records related to compliance with the bill and ensure that the records were readily available to LARA upon request. The records would have to include all of the following:

- Any requests for disbursement or other transaction that the broker-dealer or investment adviser reasonably believed to constitute financial exploitation of a specified adult and the resulting temporary hold.
- Any finding of a reasonable belief that financial exploitation has occurred, is occurring, has 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 individual who authorized a temporary hold on a disbursement or other transaction.
- Any notifications to relevant parties as required above.
- Any internal review of the facts and circumstances as required above.

A broker-dealer or investment adviser would have to provide access to the records described above, or copies of them, to law enforcement and to state agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to those entities or upon their request pursuant to an investigation. The records could include historical records as well as those relating to the most recent transaction or transactions that may constitute financial exploitation or suspected financial exploitation of a suspected adult. The records described in this paragraph would not be subject to the Freedom of Information Act (FOIA). The provisions described in this paragraph would not limit or impede the authority of LARA to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Notwithstanding any provision of law to the contrary, an agency of competent jurisdiction could disclose to any reporting or notifying broker-dealer or investment adviser the general status or final disposition of an investigation from a report made by the broker-dealer or investment adviser.

Immunity

A broker-dealer or investment adviser exercising good faith in making disclosures, placing a temporary hold, or providing access to records under the bill would be immune from any administrative or civil liabilities that could otherwise arise from those activities.

The bill would take effect 90 days after being enacted.

Proposed MCL 451.2531 et seq.

FISCAL IMPACT:

Senate Bill 315 would have an indeterminate—though likely negligible—fiscal impact on the Department of Health and Human Services, the extent of which would be dependent upon any increase in caseloads for Adult Protective Services resulting from increased reporting.

The bill also would have an indeterminate fiscal impact on local court systems. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

The bill would not have any direct fiscal impact on the Department of Licensing and Regulatory Affairs or on state or local law enforcement agencies.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.