HOUSE FLOOR SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 326

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO SECURITIES; ENACTING THE PROTECTING VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Protecting Vulnerable Adults from Financial Exploitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Protecting Vulnerable Adults from Financial Exploitation Act:

A. "agencies" means the securities division of the regulation and licensing department and the adult protective services division of the aging and long-term services department;

B. "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or

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attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities, but a partner, officer or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. "Agent" does not include an individual excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

C. "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. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a bank or savings institution if:

(a) its activities as a broker-dealer are limited to those specified in: 1) Subsections 3(a)(4)(B)(i) through (vi) and (viii) through (ix) of the federal Securities Exchange Act of 1934, and they are unsolicited transactions; 2) Subsection 3(a)(5)(B) of that act; or 3) Subsection 3(a)(5)(C) of that act; or

(b) the bank satisfies the conditions described in Subsection 3(a)(4)(E) of the federal Securities Exchange Act of 1934;

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(4) an international banking institution; or

(5) a person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

D. "eligible adult" means:

(1) a person sixty-five years of age or older; or

(2) an incapacitated person who is eighteen years of age or older;

E. "financial exploitation" means:

(1) the wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property of an eligible adult; or

(2) any act or omission taken by a person, including through the use of a power of attorney, guardianship or conservatorship of an eligible adult, to:

(a) obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property; or

(b) convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property;

F. "incapacitated person" means a person with a

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mental, physical or developmental condition that substantially impairs the person's ability to provide adequately for the person's own care or protection;

G. "investment adviser" 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. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

(1) an investment adviser representative;

(2) a lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(3) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(4) a publisher, employee or columnist of a

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bona fide newspaper, news magazine or business or financial publication of general and regular circulation or an owner operator, producer or employee of a cable, radio or television network, station or production facility, if, in either case:

(a) the financial or business news or advice is contained in a publication or broadcast disseminated to the general public; and

(b) the content does not consist of rendering advice on the basis of the specific investment situation of each client;

(5) a federal covered investment adviser;

(6) a bank or a savings institution; or

(7) any other person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

H. "investment adviser representative" means an individual employed by or associated with a New Mexico investment adviser or federal covered investment adviser and who makes recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervises employees who

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perform any of the foregoing. "Investment adviser representative" does not include an individual who:

(1) performs only clerical or ministerial acts;

(2) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(3) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in New Mexico, as "place of business" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940 and is:

(a) an investment adviser representative, as "investment adviser representative" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940; or

(b) not a supervised person as "supervised person" is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940; or

(4) is excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

I. "issuer" means a person that issues or proposes to issue a security, subject to the following:

(1) the issuer of a voting trust certificate,

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collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

(2) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate; and

(3) the issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production pursuant to a lease, right or royalty is the owner of an interest in the lease or in payments out of production pursuant to a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

J. "qualified individual" means an agent, investment adviser representative or person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser; and

K. "savings institution" means an institution organized or chartered pursuant to the laws of a state or of

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the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law, or a receiver, conservator or other liquidating agent of such institutions or entities. "Savings institution" does not include:

(1) an insurance company or other organization primarily engaged in the business of insurance;

(2) a Morris plan bank; or

(3) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act or any successor federal statute.

SECTION 3. [NEW MATERIAL] GOVERNMENTAL DISCLOSURES.--If a broker-dealer, investment adviser or qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, a broker-dealer, investment adviser or qualified individual shall promptly notify the agencies.

SECTION 4. [NEW MATERIAL] IMMUNITY FOR GOVERNMENTAL DISCLOSURES.--A broker-dealer, investment adviser or qualified individual who in exercising reasonable care makes a disclosure

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of information pursuant to Section 3 of the Protecting Vulnerable Adults from Financial Exploitation Act shall be immune from administrative or civil liability that might otherwise arise from such a disclosure or from a failure to notify the customer of the disclosure.

SECTION 5. [NEW MATERIAL] THIRD-PARTY AND AGENCY DISCLOSURE.--

A. If a broker-dealer, investment adviser or qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, a broker-dealer, investment adviser or qualified individual:

(1) shall notify the adult protective services division of the aging and long-term services department pursuant to the Adult Protective Services Act;

(2) shall attempt to notify a third-party previously designated by the eligible adult; and

(3) may attempt to notify a third-party that is not designated but is reasonably associated with the eligible adult.

B. Disclosure shall not be made to a designated third-party that is at the time of disclosure suspected of financial exploitation or other abuse of the eligible adult.

SECTION 6. [NEW MATERIAL] IMMUNITY FOR THIRD-PARTY DISCLOSURES.--A broker-dealer, investment adviser or qualified

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individual who, in exercising reasonable care, complies with Section 5 of the Protecting Vulnerable Adults from Financial Exploitation Act shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

SECTION 7. [NEW MATERIAL] DELAYING DISBURSEMENTS OR TRANSACTIONS.--

A. A broker-dealer or investment adviser may delay a disbursement or transaction from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker-dealer, investment adviser or qualified individual reasonably believes, after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation, that the requested disbursement or transaction may result in financial exploitation of an eligible adult; and

(2) the broker-dealer or investment adviser:

(a) immediately, but in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

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(b) immediately, but in no event more than two business days after the requested disbursement or transaction, notifies the agencies; and

(c) provides, upon a request by the securities division of the regulation and licensing department, a status report of the internal review required pursuant to Paragraph (1) of Subsection A of this section.

B. Any delay of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the broker-dealer or investment adviser that the disbursement or transaction will not result in financial exploitation of the eligible adult; or

(2) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction unless otherwise terminated or extended by either of the agencies or an order of a court of competent jurisdiction.

C. A court of competent jurisdiction may enter an order extending the delay of the disbursement or transaction or may order other protective relief based on the petition of the

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director of the securities division of the regulation and licensing department, the director of the adult protective services division of the aging and long-term services department, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.

SECTION 8. [NEW MATERIAL] IMMUNITY FOR DELAYING DISBURSEMENTS OR TRANSACTIONS.--A broker-dealer or investment adviser that, in exercising reasonable care, complies with Section 7 of the Protecting Vulnerable Adults from Financial Exploitation Act shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section.

SECTION 9. [NEW MATERIAL] TRAINING.--

A. A qualified individual, broker-dealer or investment adviser will be granted the immunity outlined in Sections 4, 6 and 8 of the Protecting Vulnerable Adults from Financial Exploitation Act only if that person has completed the training required by this section.

B. A broker-dealer or investment adviser shall provide training concerning the financial exploitation of eligible adults to its employees who are required to be registered in New Mexico as agents or investment adviser representatives and who have contact with customers and access to account information on a regular basis and as part of their

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C. The training required by this section may include indicators of financial exploitation of an eligible adult and the process for reporting suspected financial exploitation both internally and to the agencies.

D. The training required by this section shall be established by a rule promulgated or an order issued by the director of the securities division of the regulation and licensing department, which rule or order may include training guidelines or a standardized training curriculum that broker-dealers and investment advisers may use. A broker-dealer or investment adviser may develop the broker-dealer's or investment adviser's own training as approved by the director.

SECTION 10. [NEW MATERIAL] RECORDS.--A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to 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 may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be

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considered a public record as defined in Subsection G of Section 14-2-6 NMSA 1978. Nothing in this provision shall limit or otherwise impede the authority of the director of the securities division of the regulation and licensing department to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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