

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 17-1253

BY REPRESENTATIVE(S) Danielson, Becker K., Buckner, Coleman, Esgar, Exum, Ginal, Gray, Hamner, Herod, Hooton, Jackson, Kennedy, Lebsack, Lee, Lontine, McLachlan, Melton, Michaelson Jenet, Mitsch Bush, Pettersen, Rosenthal, Salazar, Singer, Valdez, Winter, Young, Duran, Arndt, Benavidez, Carver, Garnett, Hansen, Pabon, Weissman;

also SENATOR(S) Crowder, Aguilar, Court, Fenberg, Fields, Garcia, Guzman, Jones, Kagan, Kefalas, Kerr, Merrifield, Moreno, Todd, Zenzinger.

CONCERNING THE "PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly finds and declares that:

(1) Financial exploitation is the fastest-growing category of elder abuse in many states;

(2) According to the 2010 Investor Protection Trust Elder Fraud Survey, one out of every five citizens sixty-five years of age or older has

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

been victimized by a financial fraud;

(3) This act is modeled on legislation proposed by the North American Securities Administrators Association;

(4) The Colorado commissioner of securities and the Colorado division of securities are committed to protecting retail investors and are well-positioned to intercede on behalf of vulnerable persons;

(5) However, to be successful in combating financial exploitation, the commissioner and the division must be made aware of the exploitation at the time that it occurs;

(6) Mandatory reporting by persons licensed by the division of securities ensures that the division is alerted to cases of potential financial exploitation as early as possible, when intervention may be able to prevent harm or limit the damage to victims of financial exploitation;

(7) A mandatory reasonable-belief reporting requirement, coupled with immunity for reporting, provides an appropriate balance of incentives to encourage licensed securities professionals to report potential financial exploitation;

(8) It is also important that licensed securities professionals are aware of the reporting requirement and educated on the signs of suspected financial exploitation; and

(9) It is appropriate for the commissioner of securities to develop training programs on financial exploitation and to consider establishing by rule requirements for securities professionals to complete training in this area.

SECTION 2. In Colorado Revised Statutes, **add** part 10 to article 51 of title 11 as follows:

PART 10
PROTECT VULNERABLE ADULTS
FROM FINANCIAL EXPLOITATION ACT

11-51-1001. Short title. THE SHORT TITLE OF THIS PART 10 IS THE

"PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT".

11-51-1002. Definitions. AS USED IN THIS PART 10, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BROKER-DEALER" HAS THE SAME MEANING AS IN SECTION 11-51-201 (2).

(2) "ELIGIBLE ADULT" MEANS:

(a) A PERSON SEVENTY YEARS OF AGE OR OLDER; OR

(b) AN INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO IS SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

(3) "FINANCIAL EXPLOITATION" MEANS AN ACT OR OMISSION COMMITTED BY A PERSON WHO:

(a) USES DECEPTION, HARASSMENT, INTIMIDATION, OR UNDUE INFLUENCE TO PERMANENTLY OR TEMPORARILY DEPRIVE AN ELIGIBLE ADULT OF THE USE, BENEFIT, OR POSSESSION OF ANY THING OF VALUE;

(b) EMPLOYS THE SERVICES OF A THIRD PARTY FOR THE PROFIT OR ADVANTAGE OF THE PERSON OR ANOTHER PERSON TO THE DETRIMENT OF THE ELIGIBLE ADULT;

(c) FORCES, COMPELS, COERCES, OR ENTICES AN ELIGIBLE ADULT TO PERFORM SERVICES FOR THE PROFIT OR ADVANTAGE OF THE PERSON OR ANOTHER PERSON AGAINST THE WILL OF THE ELIGIBLE ADULT; OR

(d) MISUSES THE PROPERTY OF AN ELIGIBLE ADULT IN A MANNER THAT ADVERSELY AFFECTS THE ELIGIBLE ADULT'S ABILITY TO RECEIVE HEALTHCARE OR HEALTHCARE BENEFITS OR TO PAY BILLS FOR BASIC NEEDS OR OBLIGATIONS.

(4) "INVESTMENT ADVISER" HAS THE SAME MEANING AS IN SECTION 11-51-201 (9.5).

(5) "INVESTMENT ADVISER REPRESENTATIVE" HAS THE SAME MEANING AS IN SECTION 11-51-201 (9.6).

(6) "QUALIFIED INDIVIDUAL" MEANS ANY SALES REPRESENTATIVE, INVESTMENT ADVISER REPRESENTATIVE, OR PERSON WHO SERVES IN A SUPERVISORY, COMPLIANCE, OR SENIOR INVESTOR PROTECTION CAPACITY FOR A BROKER-DEALER OR INVESTMENT ADVISER.

(7) "SALES REPRESENTATIVE" HAS THE SAME MEANING AS IN SECTION 11-51-201 (14).

11-51-1003. Governmental disclosures - immunity. (1) IF A QUALIFIED INDIVIDUAL, WHILE ACTING WITHIN THE SCOPE OF EMPLOYMENT, REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT MAY HAVE OCCURRED, MAY HAVE BEEN ATTEMPTED, OR MAY BE OR IS BEING ATTEMPTED, THE BROKER-DEALER OR INVESTMENT ADVISER SHALL PROMPTLY NOTIFY THE COMMISSIONER OF SECURITIES APPOINTED PURSUANT TO SECTION 11-51-701. THE SECURITIES COMMISSIONER SHALL FORWARD A COPY OF THE REPORT WITHIN ONE BUSINESS DAY TO LOCAL LAW ENFORCEMENT AND TO THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES HANDLING ADULT PROTECTIVE SERVICES.

(2) A QUALIFIED INDIVIDUAL WHO, IN GOOD FAITH AND EXERCISING REASONABLE CARE, MAKES A DISCLOSURE OF INFORMATION PURSUANT TO THIS SECTION IS IMMUNE FROM ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM THE DISCLOSURE OR FOR ANY FAILURE TO NOTIFY THE CUSTOMER OF THE DISCLOSURE.

11-51-1004. Third-party disclosures - immunity. (1) IF A QUALIFIED INDIVIDUAL, WHILE ACTING WITHIN THE SCOPE OF EMPLOYMENT, REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT MAY HAVE OCCURRED, BEEN ATTEMPTED, OR MAY BE OR IS BEING ATTEMPTED, A QUALIFIED INDIVIDUAL MAY NOTIFY ANY THIRD PARTY PREVIOUSLY DESIGNATED BY OR REASONABLY ASSOCIATED WITH THE ELIGIBLE ADULT. DISCLOSURE MAY NOT BE MADE TO ANY DESIGNATED THIRD PARTY THAT IS SUSPECTED OF FINANCIAL EXPLOITATION OR OTHER ABUSE OF THE ELIGIBLE ADULT.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, IF THE QUALIFIED INDIVIDUAL IS ALSO A PERSON LISTED IN SECTION 18-6.5-108 (1)(b) AND THE QUALIFIED INDIVIDUAL HAS MADE A REPORT TO LAW ENFORCEMENT AS REQUIRED BY SECTION 18-6.5-108 (1), THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION DOES NOT HAVE TO BE FILED WITH THE COMMISSIONER.

(3) A QUALIFIED INDIVIDUAL WHO, IN GOOD FAITH AND EXERCISING REASONABLE CARE, COMPLIES WITH THIS SECTION IS IMMUNE FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM THE DISCLOSURE.

11-51-1005. Delaying disbursements - immunity. (1) A BROKER-DEALER OR INVESTMENT ADVISER MAY DELAY A DISBURSEMENT FROM AN ACCOUNT OF AN ELIGIBLE ADULT, OR AN ACCOUNT ON WHICH AN ELIGIBLE ADULT IS A BENEFICIARY, IF:

(a) THE BROKER-DEALER OR INVESTMENT ADVISER, REASONABLY BELIEVES, AFTER INITIATING AN INTERNAL REVIEW OF THE REQUESTED DISBURSEMENT AND THE SUSPECTED FINANCIAL EXPLOITATION, THAT THE REQUESTED DISBURSEMENT MAY RESULT IN FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT; AND

(b) THE BROKER-DEALER OR INVESTMENT ADVISER:

(I) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT, 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;

(II) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT, NOTIFIES THE REPORTING AGENCIES; AND

(III) CONTINUES ITS INTERNAL REVIEW OF THE SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT, AS NECESSARY, AND REPORTS THE REVIEW'S RESULTS TO THE COMMISSIONER

WITHIN SEVEN BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT.

(2) ANY DELAY OF A DISBURSEMENT AS AUTHORIZED BY THIS SECTION EXPIRES UPON THE SOONER OF:

(a) A DETERMINATION BY THE BROKER-DEALER OR INVESTMENT ADVISER THAT THE DISBURSEMENT WILL NOT RESULT IN FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT; OR

(b) FIFTEEN BUSINESS DAYS AFTER THE DATE ON WHICH THE BROKER-DEALER OR INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT OF THE FUNDS, UNLESS THE COMMISSIONER REQUESTS THAT THE BROKER-DEALER OR INVESTMENT ADVISER EXTEND THE DELAY. IF A DELAY IS REQUESTED, THE DELAY EXPIRES NO MORE THAN TWENTY-FIVE BUSINESS DAYS AFTER THE DATE ON WHICH THE BROKER-DEALER OR INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT OF THE FUNDS UNLESS SOONER TERMINATED OR EXTENDED BY THE COMMISSIONER OR AN ORDER OF A COURT OF COMPETENT JURISDICTION.

(3) A COURT OF COMPETENT JURISDICTION MAY ALSO ENTER AN ORDER EXTENDING THE DELAY OF THE DISBURSEMENT OF FUNDS OR MAY ORDER OTHER PROTECTIVE RELIEF BASED ON THE PETITION OF THE COMMISSIONER OF SECURITIES, PROTECTIVE SERVICES FOR ELIGIBLE ADULTS, THE BROKER-DEALER OR INVESTMENT ADVISER THAT INITIATED THE DELAY UNDER THIS SECTION, OR OTHER INTERESTED PARTY.

(4) A BROKER-DEALER OR INVESTMENT ADVISER WHO, IN GOOD FAITH AND EXERCISING REASONABLE CARE, COMPLIES WITH THIS SECTION IS IMMUNE FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM THE DELAY IN A DISBURSEMENT IN ACCORDANCE WITH THIS SECTION.

11-51-1006. Immunity for nondisclosure. A QUALIFIED INDIVIDUAL WHO, IN GOOD FAITH AND EXERCISING REASONABLE CARE, FAILS TO REPORT PURSUANT TO THIS PART 10 IS IMMUNE FROM ANY ADMINISTRATIVE, CRIMINAL, OR CIVIL LIABILITY FOR HIS OR HER FAILURE TO REPORT.

11-51-1007. 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 ARE NOT PUBLIC RECORDS AS DEFINED IN PART 2 OF ARTICLE 72 OF TITLE 24. NOTHING IN THIS SECTION LIMITS OR OTHERWISE IMPEDES THE AUTHORITY OF THE STATE SECURITIES COMMISSIONER TO ACCESS OR EXAMINE THE BOOKS AND RECORDS OF BROKER-DEALERS AND INVESTMENT ADVISERS AS OTHERWISE PROVIDED BY LAW.

11-51-1008. Multiple duties to report. COMPLIANCE WITH THIS PART 10 DOES NOT DISCHARGE THE DUTY OF A MANDATORY REPORTER UNDER SECTION 18-6.5-108 TO REPORT MISTREATMENT TO A LOCAL LAW ENFORCEMENT AGENCY.

SECTION 3. Effective date - applicability. This act takes effect July 1, 2017, and applies to suspected or attempted financial exploitation occurring on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO