

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 10-0103.02 Christy Chase

SENATE BILL 10-042

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Frangas and Kefalas,

Senate Committees

Judiciary

House Committees

Judiciary

A BILL FOR AN ACT

101 **CONCERNING PRIOR CONSENT FOR RELEASE OF FINANCIAL**
102 **INFORMATION TO FACILITATE INVESTIGATIONS OF FINANCIAL**
103 **EXPLOITATION OF AT-RISK ADULTS.**

HOUSE
2nd Reading Unamended
April 1, 2010

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

SENATE
3rd Reading Unamended
February 2, 2010

Under the "Protection Against Financial Exploitation of At-risk Adults Act" in the "Colorado Human Services Code", current law requires banks, industrial banks, federal savings banks, savings and loan associations, building and loan associations, trust companies, and credit

SENATE
Am ended 2nd Reading
February 1, 2010

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

unions (financial institutions), only upon request of a consumer, to offer the requesting consumer, who is either over 60 years of age or is an at-risk adult, the option to sign an informed consent form for placement in the consumer's file or records, thereby allowing the financial institution to disclose the consumer's financial information or records in connection with an investigation of known or suspected financial exploitation of the consumer.

The bill relocates this provision to the "Colorado Banking Code" and requires financial institutions to inform all account holders who are at-risk adults of their right to voluntarily sign and have placed in their bank records a consent form. The name of the form is changed to a "prior consent" form to reflect that the account holder is giving his or her consent, prior to any alleged or suspected financial exploitation activities, to the release of otherwise confidential records so as to allow a financial institution to alert or notify local law enforcement and the county or district department of social services of potential financial exploitation and provide access to those records to expedite an investigation and minimize losses suffered by victims as a result of financial exploitation. The state bank commissioner is to work with stakeholders to develop a standard prior consent form to be used by financial institutions.

"At-risk adult" is defined, consistent with the "Colorado Criminal Code", as a person who is:

- ! 60 years of age or older; or
- ! 18 years of age or older and is a person with a disability.

Financial institutions and their employees and agents are granted civil and criminal immunity when they either disclose or fail to disclose an account holder's financial information pursuant to a signed prior consent form or report or fail to report financial exploitation of an eligible account holder.

By adding the requirement to the "Colorado Banking Code", the bill allows enforcement of these requirements by the state bank commissioner.

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

2 **SECTION 1.** Title 6, Colorado Revised Statutes, is amended BY

3 THE ADDITION OF A NEW ARTICLE to read:

4 ARTICLE 21

5 PROTECTION AGAINST FINANCIAL EXPLOITATION

1 **6-21-101. Legislative declaration. (1) THE GENERAL ASSEMBLY**

2 HEREBY FINDS THAT:

3 (a) FINANCIAL EXPLOITATION OF AT-RISK ADULTS IS AN AREA OF
4 SIGNIFICANT CONCERN;

5 (b) AT-RISK ADULTS COMPRIZE AN INCREASINGLY LARGE
6 SEGMENT OF SOCIETY, AND THE FINANCIAL EXPLOITATION OF SUCH
7 PERSONS IS OCCURRING AT AN EVER-INCREASING RATE;

8 (c) PERSONS COMMITTING FINANCIAL EXPLOITATION OF AT-RISK
9 ADULTS MAY BE PERSONS KNOWN TO THE AT-RISK ADULT OR STRANGERS
10 PERPETRATING FRAUDULENT SCHEMES, AND MAY BE IN A POSITION TO
11 THREATEN TO WITHHOLD CARE, MANIPULATE, OR DECEIVE AN AT-RISK
12 ADULT;

13 (d) AT-RISK ADULTS MAY NOT REPORT OR PREVENT FINANCIAL
14 EXPLOITATION DUE TO LACK OF INFORMATION, FEAR, OR INTIMIDATION;

15 (e) FINANCIAL INSTITUTIONS ARE IN UNIQUE POSITIONS TO
16 ACQUIRE EARLY KNOWLEDGE OF FINANCIAL EXPLOITATION BY NOTICING
17 INDICATORS SUCH AS SUDDEN CHANGES IN BANK ACCOUNT ACTIVITY OR
18 BANKING PRACTICES; UNEXPLAINED WITHDRAWALS OR ATYPICAL
19 TRANSACTIONS INVOLVING WITHDRAWALS; ABRUPT CHANGES TO WILLS OR
20 OTHER FINANCIAL DOCUMENTS REQUESTED BY THE AT-RISK ADULT; THE
21 SUDDEN APPEARANCE OF PREVIOUSLY UNINVOLVED RELATIVES CLAIMING
22 A RIGHT TO THE AT-RISK ADULT'S AFFAIRS AND POSSESSIONS; AND
23 UNEXPLAINED, SUDDEN TRANSFERS OF ASSETS TO A FAMILY MEMBER OF
24 THE AT-RISK ADULT OR ANOTHER PERSON OUTSIDE OF THE AT-RISK
25 ADULT'S FAMILY;

26 (f) WHILE FINANCIAL INSTITUTIONS ARE OFTEN IN A POSITION TO
27 NOTICE INDICATORS OF FINANCIAL EXPLOITATION, THEY MAY BE LIMITED

1 IN THEIR ABILITY TO RELEASE FINANCIAL RECORDS IMMEDIATELY TO LAW
2 ENFORCEMENT AND COUNTY DEPARTMENTS BECAUSE OF THEIR
3 OBLIGATIONS TO MAINTAIN CONFIDENTIALITY OF BANK FILES AND
4 RECORDS;

5 (g) BY OBTAINING A SIGNED PRIOR CONSENT FORM FROM
6 ACCOUNT HOLDERS WHO ARE AT-RISK ADULTS, FINANCIAL INSTITUTIONS
7 CAN COOPERATE AND SHARE VITAL INFORMATION WITH LAW
8 ENFORCEMENT AND COUNTY DEPARTMENTS, ALLOWING THOSE ENTITIES
9 TO RESPOND MORE QUICKLY TO KNOWN OR SUSPECTED INSTANCES OF
10 FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

11 (2) THEREFORE, THE GENERAL ASSEMBLY FINDS AND DETERMINES
12 THAT IT IS APPROPRIATE TO REQUIRE FINANCIAL INSTITUTIONS, WHO MAY
13 BE IN A POSITION TO OBSERVE INDICATORS OF FINANCIAL EXPLOITATION,
14 TO OFFER AT-RISK ADULTS THE OPTION TO SIGN A PRIOR CONSENT FORM
15 SO AS TO FACILITATE RAPID RESPONSE FROM LAW ENFORCEMENT AND
16 COUNTY DEPARTMENTS.

17 **6-21-102. Definitions. As used in this Article:**

18 (1) "ACCOUNT HOLDER" MEANS A PERSON WHO OPENS OR HAS AN
19 ACCOUNT AT A FINANCIAL INSTITUTION ESTABLISHED PRIMARILY FOR
20 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

21 (2) "AT-RISK ADULT" HAS THE SAME MEANING AS SET FORTH IN
22 SECTION 18-6.5-102, C.R.S.

23 (3) "COUNTY DEPARTMENT" MEANS A COUNTY OR DISTRICT
24 DEPARTMENT OF SOCIAL SERVICES.

25 (4) "ELIGIBLE ACCOUNT HOLDER" MEANS AN ACCOUNT HOLDER
26 WHO IS OR BECOMES, WHILE HOLDING AN ACCOUNT AT THE FINANCIAL
27 INSTITUTION, AN AT-RISK ADULT.

1 (5) "FINANCIAL EXPLOITATION" MEANS THE ILLEGAL OR IMPROPER
2 USE OF AN AT-RISK ADULT'S FINANCIAL RESOURCES FOR ANOTHER
3 PERSON'S PROFIT OR ADVANTAGE.

4 (6) "FINANCIAL INSTITUTION" MEANS A STATE OR FEDERAL BANK,
5 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR COMPANY,
6 BUILDING AND LOAN ASSOCIATION, TRUST COMPANY, OR CREDIT UNION.

7 **6-21-103. Release of financial information - prior consent -**
8 **financial exploitation investigations - civil immunity.** (1) (a) A
9 FINANCIAL INSTITUTION SHALL OFFER EACH ELIGIBLE ACCOUNT HOLDER,
10 AND MAY OFFER ALL ACCOUNT HOLDERS, THE OPTION TO VOLUNTARILY
11 SIGN A PRIOR CONSENT FORM FOR PLACEMENT IN THE ACCOUNT
12 HOLDER'S FILE OR RECORD MAINTAINED BY THE FINANCIAL INSTITUTION.
13 THE FINANCIAL INSTITUTION SHALL PROVIDE NOTICE OF THE AVAILABILITY
14 OF THE OPTION, INCLUDING A DESCRIPTION OF THE PURPOSE OF THE PRIOR
15 CONSENT AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1), WHEN
16 THE FINANCIAL INSTITUTION ESTABLISHES A CUSTOMER RELATIONSHIP
17 WITH AN ELIGIBLE ACCOUNT HOLDER AND AT LEAST ANNUALLY DURING
18 THE CONTINUATION OF THE RELATIONSHIP. THE FINANCIAL INSTITUTION
19 MAY PROVIDE THE NOTICE REQUIRED BY THIS SUBSECTION (1) IN
20 CONJUNCTION WITH THE DISCLOSURE REQUIRED BY 15 U.S.C. SEC. 6803.

21 (b) BY SEPTEMBER 1, 2010, THE ATTORNEY GENERAL SHALL
22 DEVELOP, WITH INPUT FROM THE DIVISION OF BANKING AND THE DIVISION
23 OF FINANCIAL SERVICES IN THE DEPARTMENT OF REGULATORY AGENCIES,
24 REPRESENTATIVES OF FINANCIAL INSTITUTIONS, COUNTY DEPARTMENTS,
25 LOCAL LAW ENFORCEMENT, DISTRICT ATTORNEYS, AT-RISK ADULTS, AND
26 OTHER STAKEHOLDERS, A STANDARD PRIOR CONSENT FORM THAT MAY BE
27 USED BY FINANCIAL INSTITUTIONS.

1 (c) BY SIGNING A PRIOR CONSENT FORM, AN ACCOUNT HOLDER
2 WAIVES THE CONFIDENTIALITY LIMITATIONS RELATED TO HIS OR HER
3 FINANCIAL RECORDS MAINTAINED AT THE FINANCIAL INSTITUTION FOR THE
4 LIMITED PURPOSE OF ALLOWING THE FINANCIAL INSTITUTION TO ALERT OR
5 NOTIFY THE COUNTY DEPARTMENT AND A LOCAL LAW ENFORCEMENT
6 AGENCY OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF THE
7 ACCOUNT HOLDER AND PROVIDE THE COUNTY DEPARTMENT AND LOCAL
8 LAW ENFORCEMENT ACCESS TO THE ACCOUNT HOLDER'S RECORDS TO
9 INVESTIGATE KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF THE
10 ACCOUNT HOLDER.

11 (d) A PRIOR CONSENT FORM EXECUTED PURSUANT TO THIS SECTION
12 IS EFFECTIVE UNTIL THE FINANCIAL INSTITUTION RECEIVES WRITTEN
13 NOTICE OF REVOCATION AND SURVIVES ANY DISABILITY OF THE
14 ACCOUNT HOLDER THAT OCCURS AFTER THE EXECUTION OF THE PRIOR
15 CONSENT FORM. IN THE ABSENCE OF ACTUAL KNOWLEDGE OF A JUDICIAL
16 DETERMINATION OF INCAPACITY, A FINANCIAL INSTITUTION MAY ASSUME
17 THAT ANY ACCOUNT HOLDER THAT EXECUTES A PRIOR CONSENT FORM
18 HAS THE LEGAL CAPACITY TO PERFORM THE ACT.

22 **SECTION 2.** 26-3.1-206, Colorado Revised Statutes, is
23 amended to read:

26-3.1-206. Prior consent form. Upon request, A financial institution shall offer any adult over the age of sixty or any at-risk adult with an account at such institution ELIGIBLE ACCOUNT HOLDERS, AS DEFINED IN SECTION 6-21-102, C.R.S., the option of signing an informed

1 A PRIOR consent form prior to any report of financial exploitation, for
2 placement in the account holder's file or record maintained by the
3 financial institution. The informed consent form shall waive
4 confidentiality limitations related to an account holder's financial records
5 maintained at the financial institution for the limited purpose of allowing
6 the financial institution, the county department, and a local law
7 enforcement agency access to the account holder's records for the limited
8 purpose of investigating known or suspected financial exploitation of an
9 at-risk adult IN ACCORDANCE WITH SECTION 6-21-103, C.R.S.

10 **SECTION 3. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.