

Legislative Analysis



FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

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House Bill 4197 (H-1) as reported from committee

Sponsor: Rep. Angela Witwer

Committee: Insurance and Financial Services

Complete to 6-6-23

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

(Enacted as Public Act 306 of 2023)

SUMMARY:

House Bill 4197 would add Article 5A (Financial Exploitation) to the Uniform Securities Act to authorize actions to protect individuals from financial exploitation and to allow certain actions to be taken, including placing a delayed authorization on the disbursement of funds, to protect a vulnerable adult from financial exploitation or covered financial exploitation.

Under the bill, if a broker-dealer or investment adviser suspects or detects **covered financial exploitation** of a client or customer, they could delay the related disbursement or transaction for further investigation, and could continue the delay if they still suspect or detect covered financial exploitation after investigation. A delay 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 covered financial exploitation of the customer or client.
- Not more than 15 business days after the date the broker-dealer or investment adviser first delayed the disbursements or transaction, unless otherwise terminated or extended as described below, or by court order.

Covered financial exploitation would mean **financial exploitation** of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a **caregiver** relationship.

Financial exploitation would mean any of the following:

- A fraudulent or otherwise illegal, **unauthorized**, or improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.
- A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that results or is intended to result in depriving another individual of rightful access to or use of benefits, resources, belongings or assets.

Unauthorized would mean without permission, or using permission obtained through deception, coercion, intimidation, or improper leveraging of a caregiver relationship.

Caregiver would mean a parent or other relative responsible for the health and safety of an individual, or a guardian, conservator, or any other individual with legal or fiduciary obligations to an individual.

If a broker-dealer's or investment adviser's examination or investigation of the covered exploitation supports the suspicion of covered financial exploitation or a reasonable belief that exploitation has been detected, the broker-dealer or investment adviser could extend a delay

for up to 40 business days after the date described above unless the delay is terminated or further extended as described below.

If a broker-dealer or investment adviser is informed by a **law enforcement agency**, **Adult Protective Services**, or another **agency of competent jurisdiction** that suspected or detected covered financial exploitation has been reported, the broker-dealer or investment adviser could extend the term of a delay until the broker-dealer or investment adviser is informed of the dismissal of the reported incident by all agencies who informed the broker-dealer or investment adviser of an investigation.

Law enforcement agency would mean the Michigan State Police or a police agency of a city, village, township, or county.

Adult Protective Services would mean the unit under the Department of Health and Human Services (DHHS) that is charged with the investigation of abuse, neglect, or exploitation of vulnerable individuals under the Social Welfare Act.

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

No more than two business days after the date the broker-dealer or investment adviser first placed the delay, the broker-dealer or investment adviser would have to provide written notification of the reason for the delay (maintained as correspondence under the record-keeping provisions of the act) to all of the following:

- The administrator and an agency of competent jurisdiction.
- All persons authorized to transact business on the account, unless a person is unavailable or the broker-dealer or investment adviser reasonably believes that the person has engaged, is engaged, or will engage in financial exploitation of the client or customer.
- Any individual the client or customer previously designated or authorized to receive information about the account, unless the individual is unavailable or the broker-dealer or investment adviser believes that the individual has engaged, is engaged, or will engage in financial exploitation of the client or customer.

If a broker-dealer or investment adviser suspects or detects covered financial exploitation of a **vulnerable adult**, the broker-dealer or investment adviser would have to report that activity to a law enforcement agency or Adult Protective Services. A report to Adult Protective Services would have to be made under procedures established by applicable law.

Vulnerable adult would mean an adult who, because of mental or physical impairment or advanced age, is unable to protect themselves for covered financial exploitation.

A broker-dealer or investment adviser would not have to make a report of suspected covered financial exploitation to a law enforcement agency or Adult Protective Services if, after investigation, the broker-dealer or investment adviser makes a determination that covered financial exploitation has not occurred or is not occurring and that no action is necessary.

The bill would further provide that, if a broker-dealer or investment adviser suspects or detects covered financial exploitation of a client or customer, they may provide notification of that covered financial exploitation to any of the following:

- An agency of competent jurisdiction.
- A reasonably associated individual, unless they are unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in covered financial exploitation of the client or customer.
- Any third party previously designated by the client or customer to receive information about the account, unless the individual is unavailable or the broker-dealer or investment adviser reasonably believes that the individual has engaged, is engaged, or will engage in the covered financial exploitation of the client or customer.

A broker-dealer or investment adviser that took action under the bill would have to provide to the administrator or an agency of competent jurisdiction access to or copies of any written procedures it adopts, maintains, and implements that are 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 vulnerable adults. Only an individual serving in a supervisory, compliance, legal, or senior or vulnerable investor protection capacity for the broker-dealer or investment adviser would be eligible for identification as an individual authorized to place, terminate, or extend a delay on behalf of the broker-dealer or investment adviser.

A report of suspected or detected covered financial exploitation made by a broker-dealer or investment adviser would have to include the name of the individual believed to be the victim, a description of the covered financial exploitation, and a designated contact for notices. If a report is made by telephone, the law enforcement agency or Adult Protective Services receiving the report would have to make a written report of the information provided in the telephonic report.

No more 15 business days after it receives a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser, the law enforcement agency or Adult Protective Services would have to provide written notification to the designated contact that clearly indicates whether the reported incident is under investigation or has been referred for investigation by a law enforcement agency. As soon as practicable after the investigation, the law enforcement agency or Adult Protective Services would have to notify the broker-dealer or investment adviser of the investigation's disposition.

In addition, no more 15 business days after it receives a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser, the law enforcement agency or Adult Protective Services would have to notify the office of a county prosecutor. Notice would have to be made in a manner specified by the attorney general and include, at a minimum, a copy of each report submitted to or committed to written form by the law enforcement agency or Adult Protective Services and any action taken based on the report.

If a broker-dealer or investment adviser that attempts to make a report of suspected or detected covered financial exploitation is unable to communicate with law enforcement or Adult Protective Services or if a law enforcement agency or Adult Protective Services receiving a report fails to provide notification to the broker-dealer or investment adviser, the broker-dealer

or investment adviser could notify the office of a county prosecutor in a manner specified by the attorney general.

A law enforcement agency, Adult Protective Services, or county prosecutor would be prohibited from disclosing the identity of an individual or broker-dealer or investment adviser making a report of suspected or detected covered financial exploitation without their consent. The bill would not prohibit a disclosure made by Adult Protective Services to a law enforcement agency or by law enforcement agency or adult protective services to a county prosecutor, or a disclosure required in a civil or criminal proceeding. A law enforcement agency, Adult Protective Services, or county prosecutor could not disclose the identity, personal, or account information of an individual who is the subject of a report of suspected detected covered financial exploitation without the individual's consent except as described above or as required by civil or criminal proceeding.

The identity of an individual or broker-dealer or investment adviser making a report of suspected or detected covered financial exploitation would be exempt from disclosure under the Freedom of Information Act (FOIA). The identity of the individual that is the suspected or confirmed victim of covered financial exploitation or their personal account information would also be exempt from disclosure under FOIA. The bill would not limit the applicability of any other exceptions to disclosure under FOIA to all or any part of a report made under the act.

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 provide access to any records related to compliance with the bill and ensure that the records were readily available to LARA upon request. The records could include any of the following:

- Any requests for disbursement or other transaction that the broker-dealer or investment adviser reasonably believed to constitute covered financial exploitation of a vulnerable adult and the resulting temporary delay.
- Any finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying a decision to delay a disbursement or other transaction.
- The name and title of any individual who authorized a delay on a disbursement or other transaction.
- Any notifications to relevant parties as required above.
- Any investigation or examination of available facts conducted as required above.

A broker-dealer or investment adviser would have to provide access to or copies of records that are relevant to suspected or detected covered financial exploitation to Adult Protective Services and law enforcement agencies, either as part of a referral to Adult Protective Services or a law enforcement agency or on request of Adult Protective Services or a law enforcement agency in connection with an investigation. The records could include historical records as well as those relating to the most recent transaction or transactions that could constitute suspected or detected covered financial exploitation. The records would not be subject to FOIA. The provisions described in this paragraph would not limit or impede the authority of the Department of Licensing and Regulatory Affairs 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.

A broker-dealer or investment adviser exercising good faith in an action, determination, omission, or practice under the bill would be immune from any administrative or civil liability that could otherwise arise from those activities.

The bill would not limit the responsibilities of a law enforcement agency to enforce the laws of this state or preclude a law enforcement agency from reporting an investigating, as appropriate, alleged criminal conduction.

In addition, the bill would not limit the ability or authority of a broker-dealer or investment adviser to take lawful action under local, state, or federal law or private agreement or report or prevent fraud or other illegal activity related to its operations or the assets of a client or customer that are held by the broker-dealer or investment adviser.

The bill would not restrict or prohibit an individual other than an individual acting as an employee of a broker-dealer or investment adviser who suspects or detects that covered financial exploitation of an individual has occurred or is being attempted by another individual from making a report to a law enforcement agency or Adult Protective Services.

The bill would not limit the responsibilities of Adult Protective Services to investigate, as appropriate, alleged abuse of any adult in need of protective services as defined in the Social Welfare Act.

The bill would take effect 90 days after being enacted.

Proposed MCL 451.2531 et seq.

BACKGROUND:

According to committee testimony, the bill would strengthen current Financial Industry Regulatory Authority (FINRA) and U.S. Securities and Exchange Commission (SEC) rules¹ by including transactions as subject to temporary holds, as is now industry best practice, and by allowing Michigan-only registered entities to place temporary holds. According to the testimony, more than 35 states have already enacted similar provisions.

According to supporters of the legislation, it is estimated that only 1 in 44 cases of financial abuse are reported. They argue the bill would provide an important additional tool to prevent or catch unreported cases.

The bill is substantially similar to SB 315 of the 2021-22 legislative session as that bill was reported from the House Financial Services committee.

¹ See FINRA Rule 2165: <https://www.finra.org/rules-guidance/notices/22-05>

FISCAL IMPACT:

House Bill 4197 would have an indeterminate, though likely limited, fiscal impact on law enforcement agencies. The bill would create certain communication requirements with respect to law enforcement agencies, but these costs may be offset by existing resources.

The bill 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.

POSITIONS:

Representatives of the National Association of Insurance and Financial Advisors - Michigan testified in support of the bill. (5-18-23)

The following entities indicated support for the bill (5-18-23):

- Department of Licensing and Regulatory Affairs
- Michigan Bankers Association
- American Association of Retired Persons
- Team Wellness

Legislative Analyst: Alex Stegbauer
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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.