

FINANCIAL EXPLOITATION OF SPECIFIED ADULTS

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House Bill 5131 (proposed substitute H-1)

Sponsor: Rep. Angela Witwer

Committee: Financial Services

Complete to 2-24-20

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

SUMMARY:

House Bill 5131 would add Article 5A (Financial Exploitation of Specified Adults) to the Uniform Securities Act, to authorize broker-dealers and investment advisors 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 advisor 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 advisor'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 advisor 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 advisor 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 advisor first placed the temporary hold, he or she provides notification, orally, electronically, or in writing, 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 advisor 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 advisor believes that he or she has engaged, is engaged, or will engage in financial exploitation of the specified adult.
- The broker-dealer or investment advisor 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.

A temporary hold would expire no later than 15 business days after the date it was first placed, unless the hold were otherwise terminated or extended by the administrator, by another agency of competent jurisdiction, or by a court of competent jurisdiction. However, if the broker-dealer's or investment advisor'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 10 business days, unless otherwise terminated or extended by the administrator or another agency or court of competent jurisdiction.

The bill would not require a broker-dealer or investment advisor 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 advisor 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 advisor. Only an individual serving the broker-dealer or investment advisor in a supervisory, compliance, or legal capacity could be so authorized.

A broker-dealer or investment advisor 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 advisor complied with the bill's requirements.

Records availability

A broker-dealer or investment advisor would have to retain records related to compliance with the bill and ensure that the records were readily available to the Department of Insurance and Financial Services 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 advisor 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 broker-dealer or investment advisor that 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.

The bill would take effect 90 days after its enactment.

Proposed MCL 451.2531 et seq.

FISCAL IMPACT:

House Bill 5131 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.

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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.