

HOUSE BILL NO. 5131

October 17, 2019, Introduced by Reps. Witwer, Tyrone Carter, Bolden, LaGrand, Chirkun, Garza, Pagan, Clemente, Manoogian, Koleszar, Cherry, Rabhi, Camilleri, Coleman, Lasinski, Brenda Carter, Kennedy, Byrd, Haadsma, Wozniak, Elder, Hope, Love, Anthony, Brixie, Warren, Gay-Dagnogo, Hood, Cambensy, Kuppa, Sowerby, Wittenberg, Lightner, Hertel, Crawford and Kahle and referred to the Committee on Financial Services.

A bill to amend 2008 PA 551, entitled
"Uniform securities act (2002)," (MCL 451.2101 to 451.2703) by amending the title, as amended by 2014 PA 355, and by adding article 5A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to enact the uniform securities act (2002) relating to
3 the issuance, offer, sale, or purchase of securities; to prohibit



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fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to ~~under~~ the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to regulate Michigan investment markets; to make uniform the law with reference to securities; to authorize certain actions to protect certain specified adults from financial exploitation; to prescribe the powers and duties of certain state governmental officers and agencies; and to repeal acts and parts of acts.

ARTICLE 5A

FINANCIAL EXPLOITATION OF SPECIFIED ADULTS

Sec. 531. As used in this article:

(a) "Account" means any account with a broker-dealer or investment advisor for which a specified adult has the authority to transact business.

(b) "Financial exploitation" means any of the following:

(i) The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities.

(ii) Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to do any of the following:

(A) Obtain control, through deception, intimidation, or undue influence, over the specified adult's money, assets, or property.

(B) Convert the specified adult's money, assets, or property.

(c) "Specified adult" means any of the following:

(i) An individual who is 65 years of age or older.

(ii) An individual who is 18 years of age or older and who the broker-dealer or investment advisor reasonably believes has a



1 mental or physical impairment that renders the individual unable to
2 protect his or her own interests.

3 Sec. 533. (1) A broker-dealer or investment advisor may place
4 a temporary hold on a disbursement of funds or securities from an
5 account of a specified adult if all of the following are met:

6 (a) The broker-dealer or investment advisor reasonably
7 believes that financial exploitation of the specified adult has
8 occurred, is occurring, has been attempted, or will be attempted.

9 (b) Within 2 business days after the date that the broker-
10 dealer or investment advisor first placed the temporary hold on the
11 disbursement of funds or securities, the broker-dealer or
12 investment advisor provides notification, orally, electronically,
13 or in writing, of the reason for the temporary hold to all of the
14 following:

15 (i) All parties who are authorized to transact business on the
16 account, unless a party is unavailable or the broker-dealer or
17 investment advisor reasonably believes that the party has engaged,
18 is engaged, or will engage in the financial exploitation of the
19 specified adult.

20 (ii) To any individual who the specified adult has previously
21 designated as authorized to receive information about the account,
22 unless that individual is unavailable or the broker-dealer or
23 investment advisor reasonably believes that the individual has
24 engaged, is engaged, or will engage in the financial exploitation
25 of the specified adult.

26 (c) The broker-dealer or investment advisor immediately
27 initiates an internal review of the facts and circumstances that
28 caused the broker-dealer or investment advisor to reasonably
29 believe that the financial exploitation of the specified adult has



1 occurred, is occurring, has been attempted, or will be attempted.

2 (2) A temporary hold authorized under this section expires not
3 later than 15 business days after the date that the broker-dealer
4 or investment advisor first placed the temporary hold on the
5 disbursement of funds or securities, unless otherwise terminated or
6 extended by the administrator, another agency of competent
7 jurisdiction, or a court of competent jurisdiction, or unless
8 extended under subsection (3).

9 (3) If the broker-dealer's or investment advisor's internal
10 review of the facts and circumstances under subsection (1)(c)
11 supports the broker-dealer's or investment advisor's reasonable
12 belief that the financial exploitation of the specified adult has
13 occurred, is occurring, has been attempted, or will be attempted, a
14 broker-dealer or investment advisor may extend a temporary hold
15 authorized under this section for no longer than 10 business days
16 following the date authorized under subsection (2), unless
17 otherwise terminated or extended by the administrator, another
18 agency of competent jurisdiction, or a court of competent
19 jurisdiction.

20 Sec. 535. (1) In addition to any other recordkeeping
21 requirements under this act, a broker-dealer or investment advisor
22 that takes action under this article shall establish and maintain
23 written procedures reasonably designed to achieve compliance with
24 this article, including, but not limited to, procedures related to
25 the identification, escalation, and reporting of matters related to
26 the financial exploitation of specified adults.

27 (2) The procedures required under subsection (1) must identify
28 the title of each individual who is authorized to place, terminate,
29 or extend a temporary hold on behalf of the broker-dealer or

1 investment advisor under this article. Only an individual who
2 serves in a supervisory, compliance, or legal capacity for the
3 broker-dealer or investment advisor is eligible for identification
4 as an authorized individual under this subsection.

5 Sec. 537. A broker-dealer or investment advisor shall retain
6 records related to compliance with this article and ensure that
7 those records are readily available to the department on request.
8 The retained records must include records of all of the following:

9 (a) Any requests for disbursement that a broker-dealer or
10 investment advisor reasonably believed to constitute financial
11 exploitation of a specified adult and the resulting temporary hold.

12 (b) Any finding of a reasonable belief that financial
13 exploitation has occurred, is occurring, has been attempted, or
14 will be attempted underlying a decision to place a temporary hold
15 on a disbursement.

16 (c) The name and title of any broker-dealer or investment
17 advisor that authorized a temporary hold on a disbursement.

18 (d) Any notifications to relevant parties under section
19 533(1) (b) .

20 (e) Any internal review of the facts and circumstances
21 conducted under section 533(1) (c) .

22 Sec. 539. (1) This article does not require a broker-dealer or
23 investment advisor to place temporary holds on disbursements of
24 funds or securities from the accounts of specified adults.

25 (2) A broker-dealer or investment advisor that relies on this
26 article shall develop and document training policies or programs
27 reasonably designed to ensure that the broker-dealer or investment
28 advisor complies with the requirements of this article.

29 (3) A broker-dealer's or investment advisor's reasonable

1 belief that an individual who is 18 years of age or older has a
2 mental or physical impairment that renders the individual unable to
3 protect his or her own interests may be based on the facts and
4 circumstances observed in the broker-dealer's or investment
5 advisor's business relationship with the individual.

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

