

**SUBSTITUTE FOR
HOUSE BILL NO. 4197**

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

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



1 investment markets; to make uniform the law with reference to
 2 securities; to authorize actions to protect individuals from
 3 financial exploitation; to prescribe the powers and duties of state
 4 governmental officers and agencies; and to repeal acts and parts of
 5 acts.

6 **ARTICLE 5A**

7 **FINANCIAL EXPLOITATION**

8 **Sec. 531. As used in this article:**

9 (a) "Account" means any account with a broker-dealer or
 10 investment adviser for which a client or customer has the authority
 11 to transact business.

12 (b) "Adult protective services" means the office, division, or
 13 unit under the department of health and human services that is
 14 charged with the investigation of abuse, neglect, or exploitation
 15 of vulnerable individuals under the social welfare act, 1939 PA
 16 280, MCL 400.1 to 400.119b.

17 (c) "Agency of competent jurisdiction" means an entity
 18 authorized to investigate or review suspicions of abuse or
 19 exploitation, including, but not limited to, adult protective
 20 services and a law enforcement agency.

21 (d) "Caregiver" means a parent or other relative responsible
 22 for the health and safety of an individual, or a guardian,
 23 conservator, or any other individual with legal or fiduciary
 24 obligations to an individual.

25 (e) "Covered financial exploitation" means financial
 26 exploitation of an individual through deception, manipulation,
 27 coercion, intimidation, or improper leveraging of a caregiver
 28 relationship.

29 (f) "Financial exploitation" means any of the following:



1 (i) A fraudulent or otherwise illegal, unauthorized, or
2 improper act or process of an individual who uses or attempts to
3 use the financial resources of another individual for monetary or
4 personal benefit, profit, or gain.

5 (ii) A fraudulent or otherwise illegal, unauthorized, or
6 improper act or process of an individual that results or is
7 intended to result in depriving another individual of rightful
8 access to or use of benefits, resources, belongings, or assets.

9 (g) "Law enforcement agency" means a police agency of a city,
10 village, township, or county or the state police.

11 (h) "Unauthorized" means without permission, or utilizing
12 permission obtained from an individual through deception,
13 manipulation, coercion, intimidation, or improper leveraging of a
14 caregiver relationship.

15 (i) "Vulnerable adult" means an adult who, because of mental
16 or physical impairment or advanced age, is unable to protect
17 himself or herself from covered financial exploitation.

18 (j) "Written" means inscribed in a tangible or electronic
19 medium.

20 Sec. 533. (1) Subject to subsection (4), if a broker-dealer or
21 investment adviser suspects or detects covered financial
22 exploitation of a client or customer, the broker-dealer or
23 investment adviser may delay the related disbursement or
24 transaction for further investigation or examination of available
25 facts. On investigation or examination of available facts, if the
26 broker-dealer or investment adviser still suspects or detects
27 covered financial exploitation of a client or customer, the broker-
28 dealer or investment adviser may continue the delay of the related
29 disbursement or transaction under this subsection.



1 (2) A delay authorized under this section expires on either of
2 the following:

3 (a) The day a broker-dealer or investment adviser determines
4 that the disbursement or transaction will not result in covered
5 financial exploitation of the client or customer.

6 (b) Not later than 15 business days after the date that the
7 broker-dealer or investment adviser first delayed the disbursement
8 or transaction, unless otherwise terminated or extended under
9 subsection (3) or (4), or by court order.

10 (3) If a broker-dealer's or investment adviser's investigation
11 or examination of the suspected or detected covered financial
12 exploitation supports the broker-dealer's or investment adviser's
13 suspicion of covered financial exploitation or reasonable belief
14 that covered financial exploitation has been detected, a broker-
15 dealer or investment adviser may extend a delay authorized under
16 this section for not longer than 40 business days after the date
17 authorized under subsection (2) (b), unless the delay is otherwise
18 terminated or further extended under subsection (4).

19 (4) If a broker-dealer or investment adviser is informed by a
20 law enforcement agency, adult protective services, or another
21 agency of competent jurisdiction that suspected or detected covered
22 financial exploitation that has been reported to that agency is
23 under investigation, the broker-dealer or investment adviser may
24 extend the term of a delay authorized under this section until the
25 broker-dealer or investment adviser is informed of the dismissal of
26 the reported incident by all agencies that informed the broker-
27 dealer or investment adviser of an investigation.

28 (5) Not more than 2 business days after the date that the
29 broker-dealer or investment adviser first placed the delay on the



1 disbursement or transaction, the broker-dealer or investment
2 adviser must provide written notification that is maintained as
3 correspondence under section 411(3) of the reason for the delay to
4 all of the following:

5 (a) The administrator and an agency of competent jurisdiction.

6 (b) All persons who are authorized to transact business on the
7 account, unless a person is unavailable or the broker-dealer or
8 investment adviser reasonably believes that the person has engaged,
9 is engaged, or will engage in covered financial exploitation of the
10 client or customer.

11 (c) Any individual who the client or customer has previously
12 designated as authorized to receive information about the account,
13 unless that individual is unavailable or the broker-dealer or
14 investment adviser reasonably believes that the individual has
15 engaged, is engaged, or will engage in the covered financial
16 exploitation of the client or customer.

17 (6) Except as otherwise provided in subsection (7), if a
18 broker-dealer or investment adviser suspects or detects covered
19 financial exploitation of a vulnerable adult, the broker-dealer or
20 investment adviser shall report that activity to a law enforcement
21 agency or adult protective services. If a broker-dealer or
22 investment adviser elects to report to adult protective services
23 instead of a law enforcement agency, a report made to adult
24 protective services must be made according to the procedures
25 established by adult protective services under applicable law.

26 (7) A broker-dealer or investment adviser is not required to
27 make a report of suspected covered financial exploitation to a law
28 enforcement agency or adult protective services if, after
29 investigation or examination of available facts, the broker-dealer



1 or investment adviser makes a determination that covered financial
2 exploitation has not occurred or is not occurring and no action is
3 necessary.

4 (8) Subject to subsection (6), if a broker-dealer or
5 investment adviser suspects or detects covered financial
6 exploitation of a client or customer, the broker-dealer or
7 investment adviser may provide notification of that covered
8 financial exploitation to any of the following:

9 (a) An agency of competent jurisdiction.

10 (b) A reasonably associated individual, unless that individual
11 is unavailable or the broker-dealer or investment adviser
12 reasonably believes that the individual has engaged, is engaged, or
13 will engage in covered financial exploitation of the client or
14 customer.

15 (c) Any third party previously designated by the client or
16 customer to receive information about the account, unless that
17 individual is unavailable or the broker-dealer or investment
18 adviser reasonably believes that the individual has engaged, is
19 engaged, or will engage in the covered financial exploitation of
20 the client or customer.

21 Sec. 535. (1) A broker-dealer or investment adviser that takes
22 action under this article shall provide to the administrator or an
23 agency of competent jurisdiction access to or copies of any written
24 procedures it adopts, maintains, and implements that are reasonably
25 designed to achieve compliance with this article, including, but
26 not limited to, procedures related to the identification,
27 escalation, and reporting of matters related to the financial
28 exploitation of vulnerable adults.

29 (2) Only an individual who serves in a supervisory,



1 compliance, legal, or senior or vulnerable investor protection
2 capacity for the broker-dealer or investment adviser is eligible
3 for identification as an individual authorized to place, terminate,
4 or extend a delay on behalf of the broker-dealer or investment
5 adviser under this article.

6 (3) A report of suspected or detected covered financial
7 exploitation made by a broker-dealer or investment adviser must
8 include the name of the individual believed to be the victim, a
9 description of the suspected or detected covered financial
10 exploitation, and a designated contact for notices required under
11 subsection (4). If a report is made by telephone, the law
12 enforcement agency or adult protective services that receives the
13 report must make a written report of the information provided in
14 the telephonic report.

15 (4) Not more than 15 business days after it receives a report
16 of suspected or detected covered financial exploitation from a
17 broker-dealer or investment adviser under this section, the law
18 enforcement agency or adult protective services that received the
19 report must provide written notification to the designated contact
20 of the broker-dealer or investment adviser that clearly indicates
21 whether the reported incident is under investigation or has been
22 referred to a law enforcement agency for investigation. As soon as
23 practicable after the investigation, the law enforcement agency or
24 adult protective services shall notify the broker-dealer or
25 investment adviser of the disposition of the reported incident.

26 (5) Not more than 15 business days after it receives a report
27 of suspected or detected covered financial exploitation from a
28 broker-dealer or investment adviser under this section, the law
29 enforcement agency or adult protective services must notify the



1 office of a county prosecutor. Notice must be made in a manner
2 prescribed by the attorney general and must include, at a minimum,
3 a copy of each report submitted to or committed to written form by
4 the law enforcement agency or adult protective services and the
5 response to the report by the law enforcement agency or adult
6 protective services and any action taken by the law enforcement
7 agency or adult protective services based on the report.

8 (6) If a broker-dealer or investment adviser that attempts to
9 make a report of suspected or detected covered financial
10 exploitation under this section is unable to communicate with law
11 enforcement or adult protective services to make the report, or if
12 a law enforcement agency or adult protective services that receives
13 a report under this act fails to provide notification to the
14 broker-dealer or investment adviser under subsection (4), the
15 broker-dealer or investment adviser may notify the office of a
16 county prosecutor. Notification under this subsection must be made
17 in a manner prescribed by the attorney general.

18 (7) A law enforcement agency, adult protective services, or
19 county prosecutor shall not disclose the identity of an individual
20 or broker-dealer or investment adviser that makes a report of
21 suspected or detected covered financial exploitation without the
22 consent of the individual or the broker-dealer or investment
23 adviser. However, this subsection does not prohibit a disclosure
24 that is made by adult protective services to a law enforcement
25 agency or by a law enforcement agency or adult protective services
26 to a county prosecutor as required under subsection (5), or a
27 disclosure required in a civil or criminal proceeding. A law
28 enforcement agency, adult protective services, or county prosecutor
29 shall not disclose the identity, or personal or account



1 information, of an individual that is the subject of a report of
2 suspected or detected covered financial exploitation without that
3 individual's consent, except as required under subsection (5) or as
4 required in a civil or criminal proceeding.

5 (8) The identity of an individual or broker-dealer or
6 investment adviser that makes a report of suspected or detected
7 covered financial exploitation under this section is exempt from
8 disclosure under section 13(1) (b) (iv) or (d) of the freedom of
9 information act, 1976 PA 442, MCL 15.243. The identity of an
10 individual that is the suspected or confirmed victim of covered
11 financial exploitation or his or her personal account information
12 is exempt from disclosure under section 13(1) (a), (b) (iii), or (d) of
13 the freedom of information act, 1976 PA 442, MCL 15.243. This
14 subsection does not limit the applicability of any other exceptions
15 to disclosure under section 13 of the freedom of information act,
16 1976 PA 442, MCL 15.243, to all or any part of a report made under
17 this act.

18 Sec. 537. (1) Subject to 15 USC 78o(i) (1) and 15 USC 80b-18a,
19 and the record-keeping requirements provided in section 411, a
20 broker-dealer or investment adviser shall provide access to any
21 records related to compliance with this article and ensure that
22 those records are readily available to the department on request.
23 The records described in this subsection may include all of the
24 following:

25 (a) Any requests for a disbursement or other transaction that
26 a broker-dealer or investment adviser reasonably believed to
27 constitute covered financial exploitation of a vulnerable adult and
28 the resulting temporary delay.

29 (b) Any finding of a reasonable belief that financial



1 exploitation has occurred, is occurring, has been attempted, or
 2 will be attempted underlying a decision to delay a disbursement or
 3 other transaction.

4 (c) The name and title of any individual who authorized a
 5 delay on a disbursement or other transaction.

6 (d) Any notifications to relevant parties under section 533.

7 (e) Any investigation or examination of available facts
 8 conducted under section 533(1).

9 (2) A broker-dealer or investment adviser shall provide access
 10 to or copies of records that are relevant to suspected or detected
 11 covered financial exploitation to adult protective services and law
 12 enforcement agencies, either as part of a referral to adult
 13 protective services or a law enforcement agency or on request of
 14 adult protective services or a law enforcement agency in connection
 15 with an investigation. The records may include historical records
 16 as well as records relating to the most recent transaction or
 17 transactions that may constitute suspected or detected covered
 18 financial exploitation. All records made available to agencies or
 19 law enforcement under this subsection are not subject to the
 20 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. This
 21 subsection does not limit or otherwise impede the authority of the
 22 administrator to access or examine the books and records of broker-
 23 dealers and investment advisers as otherwise provided by law.

24 Sec. 539. Notwithstanding any provision of law to the
 25 contrary, an agency of competent jurisdiction may disclose to any
 26 reporting or notifying broker-dealer or investment adviser the
 27 general status or final disposition of an investigation that arose
 28 from a report made by the broker-dealer or investment adviser.

29 Sec. 541. A broker-dealer or investment adviser that exercises



1 good faith in an action, determination, omission, or practice under
2 this article is immune from any administrative or civil liability
3 that might otherwise arise from those activities.

4 Sec. 543. (1) This article does not limit the responsibilities
5 of a law enforcement agency to enforce the laws of this state or
6 preclude a law enforcement agency from reporting and investigating,
7 as appropriate, alleged criminal conduct.

8 (2) This article does not limit the ability or authority of a
9 broker-dealer or investment adviser to do either of the following:

10 (a) Take lawful action under local, state, or federal law or
11 private agreement.

12 (b) Report or prevent fraud or other illegal activity related
13 to the broker dealer's or investment adviser's operations or the
14 assets of a client or customer that are held by the broker-dealer
15 or investment adviser.

16 (3) This article does not restrict or prohibit an individual,
17 other than an individual who is acting as an employee of a broker-
18 dealer or investment adviser, who suspects or detects that covered
19 financial exploitation of an individual has occurred or is being
20 attempted by another individual from making a report to a law
21 enforcement agency or adult protective services.

22 (4) This article does not limit the responsibilities of adult
23 protective services to investigate, as appropriate, alleged abuse
24 of any adult in need of protective services, as the term adult in
25 need of protective services is defined in section 11 of the social
26 welfare act, 1939 PA 280, MCL 400.11.

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

