

HOUSE BILL NO. 4197

March 07, 2023, Introduced by Reps. Witwer, Haadsma, Arbit, Martus, Hood, Rheingans, Tsernoglou, Morse, Young, MacDonell and Morgan and referred to the Committee on Insurance and 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
4 fraudulent practices in relation to securities; to establish civil

1 and criminal sanctions for violations of the act and civil
2 sanctions for violation of the rules promulgated ~~pursuant to~~ **under**
3 the act; to require the registration of broker-dealers, agents,
4 investment advisers, and securities; to regulate Michigan
5 investment markets; to make uniform the law with reference to
6 securities; **to authorize actions to protect individuals from**
7 **financial exploitation; to prescribe the powers and duties of state**
8 **governmental officers and agencies;** and to repeal acts and parts of
9 acts.

10 **ARTICLE 5A**

11 **FINANCIAL EXPLOITATION**

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

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

16 (b) "Adult protective services" means the office, division, or
17 unit under the department of health and human services that is
18 charged with the investigation of abuse, neglect, or exploitation
19 of vulnerable individuals under the social welfare act, 1939 PA
20 280, MCL 400.1 to 400.119b.

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

25 (d) "Caregiver" means a parent or other relative responsible
26 for the health and safety of an individual, or a guardian,
27 conservator, or any other individual with legal or fiduciary
28 obligations to an individual.

29 (e) "Covered financial exploitation" means financial

1 exploitation of an individual through deception, manipulation,
2 coercion, intimidation, or improper leveraging of a caregiver
3 relationship.

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

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

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

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

15 (h) "Unauthorized" means without permission, or utilizing
16 permission obtained from an individual through deception,
17 manipulation, coercion, intimidation, or improper leveraging of a
18 caregiver relationship.

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

22 (j) "Written" means inscribed in a tangible or electronic
23 medium.

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

1 broker-dealer or investment adviser still suspects or detects
2 covered financial exploitation of a client or customer, the broker-
3 dealer or investment adviser may continue the delay of the related
4 disbursement or transaction under this subsection.

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

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

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

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

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

1 the reported incident by all agencies that informed the broker-
2 dealer or investment adviser of an investigation.

3 (5) Not more than 2 business days after the date that the
4 broker-dealer or investment adviser first placed the delay on the
5 disbursement or transaction, the broker-dealer or investment
6 adviser must provide written notification that is maintained as
7 correspondence under section 411(3) of the reason for the delay to
8 all of the following:

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

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

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

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

1 (7) A broker-dealer or investment adviser is not required to
2 make a report of suspected covered financial exploitation to a law
3 enforcement agency or adult protective services if, after
4 investigation or examination of available facts, the broker-dealer
5 or investment adviser makes a determination that covered financial
6 exploitation has not occurred or is not occurring and no action is
7 necessary.

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

13 (a) An agency of competent jurisdiction.

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

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

25 Sec. 535. (1) A broker-dealer or investment adviser that takes
26 action under this article shall provide to the administrator or an
27 agency of competent jurisdiction access to or copies of any written
28 procedures it adopts, maintains, and implements that are reasonably
29 designed to achieve compliance with this article, including, but

1 not limited to, procedures related to the identification,
2 escalation, and reporting of matters related to the financial
3 exploitation of vulnerable adults.

4 (2) Only an individual who serves in a supervisory,
5 compliance, legal, or senior or vulnerable investor protection
6 capacity for the broker-dealer or investment adviser is eligible
7 for identification as an individual authorized to place, terminate,
8 or extend a delay on behalf of the broker-dealer or investment
9 adviser under this article.

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

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

1 (5) Not more than 15 business days after it receives a report
2 of suspected or detected covered financial exploitation from a
3 broker-dealer or investment adviser under this section, the law
4 enforcement agency or adult protective services must notify the
5 office of a county prosecutor. Notice must be made in a manner
6 prescribed by the attorney general and must include, at a minimum,
7 a copy of each report submitted to or committed to written form by
8 the law enforcement agency or adult protective services and the
9 response to the report by the law enforcement agency or adult
10 protective services and any action taken by the law enforcement
11 agency or adult protective services based on the report.

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

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

1 to a county prosecutor as required under subsection (5), or a
2 disclosure required in a civil or criminal proceeding. A law
3 enforcement agency, adult protective services, or county prosecutor
4 shall not disclose the identity, or personal or account
5 information, of an individual that is the subject of a report of
6 suspected or detected covered financial exploitation without that
7 individual's consent, except as required under subsection (5) or as
8 required in a civil or criminal proceeding.

9 (8) The identity of an individual or broker-dealer or
10 investment adviser that makes a report of suspected or detected
11 covered financial exploitation under this section is exempt from
12 disclosure under section 13(1)(b)(iv) or (d) of the freedom of
13 information act, 1976 PA 442, MCL 15.243. The identity of an
14 individual that is the suspected or confirmed victim of covered
15 financial exploitation or his or her personal account information
16 is exempt from disclosure under section 13(1)(a), (b)(iii), or (d) of
17 the freedom of information act, 1976 PA 442, MCL 15.243. This
18 subsection does not limit the applicability of any other exceptions
19 to disclosure under section 13 of the freedom of information act,
20 1976 PA 442, MCL 15.243, to all or any part of a report made under
21 this act.

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

29 (a) Any requests for a disbursement or other transaction that

1 a broker-dealer or investment adviser reasonably believed to
2 constitute covered financial exploitation of a vulnerable adult and
3 the resulting temporary delay.

4 (b) Any finding of a reasonable belief that financial
5 exploitation has occurred, is occurring, has been attempted, or
6 will be attempted underlying a decision to delay a disbursement or
7 other transaction.

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

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

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

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

28 Sec. 539. Notwithstanding any provision of law to the
29 contrary, an agency of competent jurisdiction may disclose to any

1 reporting or notifying broker-dealer or investment adviser the
2 general status or final disposition of an investigation that arose
3 from a report made by the broker-dealer or investment adviser.

4 Sec. 541. A broker-dealer or investment adviser that exercises
5 good faith in an action, determination, omission, or practice under
6 this article is immune from any administrative or civil liability
7 that might otherwise arise from those activities.

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

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

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

16 (b) Report or prevent fraud or other illegal activity related
17 to the broker dealer's or investment adviser's operations or the
18 assets of a client or customer that are held by the broker-dealer
19 or investment adviser.

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

26 (4) This article does not limit the responsibilities of adult
27 protective services to investigate, as appropriate, alleged abuse
28 of any adult in need of protective services, as the term adult in
29 need of protective services is defined in section 11 of the social

1 **welfare act, 1939 PA 280, MCL 400.11.**

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.