

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
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HOUSE BILL 326

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO SECURITIES; ENACTING THE PROTECTING VULNERABLE  
ADULTS FROM FINANCIAL EXPLOITATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Protecting Vulnerable Adults from Financial  
Exploitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Protecting Vulnerable Adults from Financial Exploitation Act:

A. "agencies" means the securities division of the  
regulation and licensing department and the adult protective  
services division of the aging and long-term services  
department;

B. "agent" means an individual, other than a  
broker-dealer, who represents a broker-dealer in effecting or

1 attempting to effect purchases or sales of securities, or  
2 represents an issuer in effecting or attempting to effect  
3 purchases or sales of the issuer's securities, but a partner,  
4 officer or director of a broker-dealer or issuer, or an  
5 individual having a similar status or performing similar  
6 functions, is an agent only if the individual otherwise comes  
7 within the term. "Agent" does not include an individual  
8 excluded by rule adopted pursuant to the New Mexico Uniform  
9 Securities Act;

10 C. "broker-dealer" means a person engaged in the  
11 business of effecting transactions in securities for the  
12 account of others or for the person's own account.

13 "Broker-dealer" does not include:

- 14 (1) an agent;
- 15 (2) an issuer;
- 16 (3) a bank or savings institution if:

17 (a) its activities as a broker-dealer  
18 are limited to those specified in: 1) Subsections  
19 3(a)(4)(B)(i) through (vi) and (viii) through (ix) of the  
20 federal Securities Exchange Act of 1934, and they are  
21 unsolicited transactions; 2) Subsection 3(a)(5)(B) of that act;  
22 or 3) Subsection 3(a)(5)(C) of that act; or

23 (b) the bank satisfies the conditions  
24 described in Subsection 3(a)(4)(E) of the federal Securities  
25 Exchange Act of 1934;

- 1 (4) an international banking institution; or  
2 (5) a person excluded by rule adopted pursuant  
3 to the New Mexico Uniform Securities Act;

4 D. "eligible adult" means:

- 5 (1) a person sixty-five years of age or older;  
6 or  
7 (2) an incapacitated person who is eighteen  
8 years of age or older;

9 E. "financial exploitation" means:

- 10 (1) the wrongful or unauthorized taking,  
11 withholding, appropriation or use of money, assets or property  
12 of an eligible adult; or  
13 (2) any act or omission taken by a person,  
14 including through the use of a power of attorney, guardianship  
15 or conservatorship of an eligible adult, to:

16 (a) obtain control, through deception,  
17 intimidation or undue influence, over the eligible adult's  
18 money, assets or property to deprive the eligible adult of the  
19 ownership, use, benefit or possession of the eligible adult's  
20 money, assets or property; or

21 (b) convert money, assets or property of  
22 the eligible adult to deprive such eligible adult of the  
23 ownership, use, benefit or possession of the eligible adult's  
24 money, assets or property;

25 F. "incapacitated person" means a person with a

1 mental, physical or developmental condition that substantially  
2 impairs the person's ability to provide adequately for the  
3 person's own care or protection;

4 G. "investment adviser" means a person that, for  
5 compensation, engages in the business of advising others,  
6 either directly or through publications or writings, as to the  
7 value of securities or the advisability of investing in,  
8 purchasing or selling securities or that, for compensation and  
9 as a part of a regular business, issues or promulgates analyses  
10 or reports concerning securities. "Investment adviser"  
11 includes a financial planner or other person that, as an  
12 integral component of other financially related services,  
13 provides investment advice to others for compensation as part  
14 of a business or that holds itself out as providing investment  
15 advice to others for compensation. "Investment adviser" does  
16 not include:

17 (1) an investment adviser representative;  
18 (2) a lawyer, accountant, engineer or teacher  
19 whose performance of investment advice is solely incidental to  
20 the practice of the person's profession;

21 (3) a broker-dealer or its agents whose  
22 performance of investment advice is solely incidental to the  
23 conduct of business as a broker-dealer and that does not  
24 receive special compensation for the investment advice;

25 (4) a publisher, employee or columnist of a

1 bona fide newspaper, news magazine or business or financial  
2 publication of general and regular circulation or an owner  
3 operator, producer or employee of a cable, radio or television  
4 network, station or production facility, if, in either case:

5 (a) the financial or business news or  
6 advice is contained in a publication or broadcast disseminated  
7 to the general public; and

8 (b) the content does not consist of  
9 rendering advice on the basis of the specific investment  
10 situation of each client;

11 (5) a federal covered investment adviser;

12 (6) a bank or a savings institution; or

13 (7) any other person excluded by rule adopted  
14 pursuant to the New Mexico Uniform Securities Act;

15 H. "investment adviser representative" means an  
16 individual employed by or associated with a New Mexico  
17 investment adviser or federal covered investment adviser and  
18 who makes recommendations or otherwise gives investment advice  
19 regarding securities, manages accounts or portfolios of  
20 clients, determines which recommendation or advice regarding  
21 securities should be given, provides investment advice or holds  
22 herself or himself out as providing investment advice, receives  
23 compensation to solicit, offer or negotiate for the sale of or  
24 for selling investment advice or supervises employees who  
25 perform any of the foregoing. "Investment adviser

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1 representative" does not include an individual who:

2 (1) performs only clerical or ministerial  
3 acts;

4 (2) is an agent whose performance of  
5 investment advice is solely incidental to the individual acting  
6 as an agent and who does not receive special compensation for  
7 investment advisory services;

8 (3) is employed by or associated with a  
9 federal covered investment adviser, unless the individual has a  
10 place of business in New Mexico, as "place of business" is  
11 defined by rule adopted pursuant to Section 203A of the federal  
12 Investment Advisers Act of 1940 and is:

13 (a) an investment adviser  
14 representative, as "investment adviser representative" is  
15 defined by rule adopted pursuant to Section 203A of the federal  
16 Investment Advisers Act of 1940; or

17 (b) not a supervised person as  
18 "supervised person" is defined in Section 202(a)(25) of the  
19 federal Investment Advisers Act of 1940; or

20 (4) is excluded by rule adopted pursuant to  
21 the New Mexico Uniform Securities Act;

22 I. "issuer" means a person that issues or proposes  
23 to issue a security, subject to the following:

24 (1) the issuer of a voting trust certificate,  
25 collateral trust certificate, certificate of deposit for a

1 security or share in an investment company without a board of  
2 directors or individuals performing similar functions is the  
3 person performing the acts and assuming the duties of depositor  
4 or manager pursuant to the trust or other agreement or  
5 instrument under which the security is issued;

6 (2) the issuer of an equipment trust  
7 certificate or similar security serving the same purpose is the  
8 person by which the property is or will be used or to which the  
9 property or equipment is or will be leased or conditionally  
10 sold or that is otherwise contractually responsible for  
11 assuring payment of the certificate; and

12 (3) the issuer of a fractional undivided  
13 interest in an oil, gas or other mineral lease or in payments  
14 out of production pursuant to a lease, right or royalty is the  
15 owner of an interest in the lease or in payments out of  
16 production pursuant to a lease, right or royalty, whether whole  
17 or fractional, that creates fractional interests for the  
18 purpose of sale;

19 J. "qualified individual" means an agent,  
20 investment adviser representative or person who serves in a  
21 supervisory, compliance or legal capacity for a broker-dealer  
22 or investment adviser; and

23 K. "savings institution" means an institution  
24 organized or chartered pursuant to the laws of a state or of  
25 the United States, authorized to receive deposits and

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1 supervised and examined by an official or agency of a state or  
2 the United States if its deposits or share accounts are insured  
3 to the maximum amount authorized by statute by the federal  
4 deposit insurance corporation, the national credit union share  
5 insurance fund or a successor authorized by federal law, or a  
6 receiver, conservator or other liquidating agent of such  
7 institutions or entities. "Savings institution" does not  
8 include:

9 (1) an insurance company or other organization  
10 primarily engaged in the business of insurance;

11 (2) a Morris plan bank; or

12 (3) an industrial loan company that is not an  
13 "insured depository institution" as defined in Section 3(c)(2)  
14 of the Federal Deposit Insurance Act or any successor federal  
15 statute.

16 SECTION 3. [NEW MATERIAL] THIRD-PARTY AND AGENCY  
17 DISCLOSURE.--

18 A. If a broker-dealer, investment adviser or  
19 qualified individual reasonably believes that financial  
20 exploitation of an eligible adult may have occurred, may have  
21 been attempted or is being attempted, a broker-dealer,  
22 investment adviser or qualified individual:

23 (1) shall promptly notify the agencies;

24 (2) shall attempt to notify a third-party  
25 previously designated by the eligible adult; and



1 (3) may attempt to notify a third-party that  
2 is not designated but is reasonably associated with the  
3 eligible adult.

4 B. Disclosure shall not be made to a designated  
5 third-party that is at the time of disclosure suspected of  
6 financial exploitation or other abuse of the eligible adult.

7 SECTION 4. [NEW MATERIAL] IMMUNITY FOR DISCLOSURES.--A  
8 broker-dealer, investment adviser or qualified individual who,  
9 in exercising reasonable care, complies with Section 3 of the  
10 Protecting Vulnerable Adults from Financial Exploitation Act  
11 and has completed the training required pursuant to Section 7  
12 of that act shall be immune from any administrative or civil  
13 liability that might otherwise arise from such disclosure.

14 SECTION 5. [NEW MATERIAL] DELAYING DISBURSEMENTS OR  
15 TRANSACTIONS.--

16 A. A broker-dealer or investment adviser may delay  
17 a disbursement or transaction from an account of an eligible  
18 adult or an account on which an eligible adult is a beneficiary  
19 if:

20 (1) the broker-dealer, investment adviser or  
21 qualified individual reasonably believes, after initiating an  
22 internal review of the requested disbursement or transaction  
23 and the suspected financial exploitation, that the requested  
24 disbursement or transaction may result in financial  
25 exploitation of an eligible adult; and

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1 (2) the broker-dealer or investment adviser:

2 (a) immediately, but in no event more  
3 than two business days after the requested disbursement or  
4 transaction, provides written notification of the delay and the  
5 reason for the delay to all parties authorized to transact  
6 business on the account, unless any such party is reasonably  
7 believed to have engaged in suspected or attempted financial  
8 exploitation of the eligible adult;

9 (b) immediately, but in no event more  
10 than two business days after the requested disbursement or  
11 transaction, notifies the agencies; and

12 (c) provides, upon a request by the  
13 securities division of the regulation and licensing department,  
14 a status report of the internal review required pursuant to  
15 Paragraph (1) of this subsection.

16 B. Any delay of a disbursement or transaction as  
17 authorized by this section will expire upon the sooner of:

18 (1) a determination by the broker-dealer or  
19 investment adviser that the disbursement or transaction will  
20 not result in financial exploitation of the eligible adult; or

21 (2) fifteen business days after the date on  
22 which the broker-dealer or investment adviser first delayed  
23 disbursement or transaction, unless either of the agencies  
24 requests that the broker-dealer or investment adviser extend  
25 the delay, in which case the delay shall expire no more than

1 twenty-five business days after the date on which the broker-  
 2 dealer or investment adviser first delayed disbursement or  
 3 transaction unless otherwise terminated or extended by either  
 4 of the agencies or an order of a court of competent  
 5 jurisdiction.

6 C. A court of competent jurisdiction may enter an  
 7 order extending the delay of the disbursement or transaction or  
 8 may order other protective relief based on the petition of the  
 9 director of the securities division of the regulation and  
 10 licensing department, the director of the adult protective  
 11 services division of the aging and long-term services  
 12 department, the broker-dealer or investment adviser that  
 13 initiated the delay under this section, or other interested  
 14 party.

15 SECTION 6. [NEW MATERIAL] IMMUNITY FOR DELAYING  
 16 DISBURSEMENTS OR TRANSACTIONS.--A broker-dealer or investment  
 17 adviser that, in exercising reasonable care, complies with  
 18 Section 5 of the Protecting Vulnerable Adults from Financial  
 19 Exploitation Act and has completed the training required  
 20 pursuant to Section 7 of the that act, shall be immune from any  
 21 administrative or civil liability that might otherwise arise  
 22 from such delay in a disbursement or transaction in accordance  
 23 with this section.

24 SECTION 7. [NEW MATERIAL] TRAINING.--

25 A. The director of the securities division of the

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1 regulation and licensing department shall promulgate, by rule,  
2 training guidelines or a standardized training curriculum that  
3 broker-dealers and investment advisers may use. A  
4 broker-dealer or investment adviser may develop the broker-  
5 dealer's or investment adviser's own training as approved by  
6 the director. The training required by this section may  
7 include indicators of financial exploitation of an eligible  
8 adult and the process for reporting suspected financial  
9 exploitation both internally and to the agencies.

10 B. A broker-dealer or investment adviser shall  
11 provide training concerning the financial exploitation of  
12 eligible adults to its employees who are required to be  
13 registered in New Mexico as agents or investment adviser  
14 representatives and who have contact with eligible adults and  
15 access to account information on a regular basis and as part of  
16 their job.

17 SECTION 8. [NEW MATERIAL] RECORDS.--A broker-dealer or  
18 investment adviser shall provide access to or copies of records  
19 that are relevant to the suspected or attempted financial  
20 exploitation of an eligible adult to the agencies and to law  
21 enforcement, either as part of a referral to the agencies, as  
22 part of a referral to law enforcement or upon request of the  
23 agencies or law enforcement pursuant to an investigation. The  
24 records may include historical records as well as records  
25 relating to the most recent transaction or transactions that

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1 may comprise financial exploitation of an eligible adult. All  
2 records made available pursuant to this section shall not be  
3 considered a public record as defined in Subsection G of  
4 Section 14-2-6 NMSA 1978. Nothing in this provision shall  
5 limit or otherwise impede the authority of the director of the  
6 securities division of the regulation and licensing department  
7 to access or examine the books and records of broker-dealers  
8 and investment advisers as otherwise provided by law.

9           **SECTION 9. EFFECTIVE DATE.**--The effective date of the  
10 provisions of this act is July 1, 2017.

underscoring material = new  
~~[bracketed material] = delete~~