

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
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 or order issued pursuant to the New
9 Mexico Uniform 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 or order
3 issued pursuant 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 or order issued pursuant to the New Mexico Uniform Securities
15 Act;

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

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1 perform any of the foregoing. "Investment adviser
2 representative" does not include an individual who:

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

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

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

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

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

21 (4) is excluded by rule adopted or order
22 issued pursuant to the New Mexico Uniform Securities Act;

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

25 (1) the issuer of a voting trust certificate,

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

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

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

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

24 K. "savings institution" means an institution
25 organized or chartered pursuant to the laws of a state or of

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

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

12 (2) a Morris plan bank; or

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

17 SECTION 3. [NEW MATERIAL] GOVERNMENTAL DISCLOSURES.--If a
18 broker-dealer, investment adviser or qualified individual
19 reasonably believes that financial exploitation of an eligible
20 adult may have occurred, may have been attempted or is being
21 attempted, the qualified individual shall promptly notify the
22 agencies.

23 SECTION 4. [NEW MATERIAL] IMMUNITY FOR GOVERNMENTAL
24 DISCLOSURES.--A broker-dealer, investment adviser or qualified
25 individual who in exercising reasonable care makes a disclosure

1 of information pursuant to Section 3 of the Protecting
 2 Vulnerable Adults from Financial Exploitation Act shall be
 3 immune from administrative or civil liability that might
 4 otherwise arise from such a disclosure or from a failure to
 5 notify the customer of the disclosure.

6 SECTION 5. [NEW MATERIAL] THIRD-PARTY DISCLOSURE.--If a
 7 qualified individual reasonably believes that financial
 8 exploitation of an eligible adult may have occurred, may have
 9 been attempted or is being attempted, a qualified individual
 10 shall notify a third party previously designated by the
 11 eligible adult. Disclosure shall not be made to a designated
 12 third party that is at the time of disclosure suspected of
 13 financial exploitation or other abuse of the eligible adult.

14 SECTION 6. [NEW MATERIAL] IMMUNITY FOR THIRD-PARTY
 15 DISCLOSURES.--A qualified individual who, in exercising
 16 reasonable care, complies with Section 5 of the Protecting
 17 Vulnerable Adults from Financial Exploitation Act shall be
 18 immune from any administrative or civil liability that might
 19 otherwise arise from such disclosure.

20 SECTION 7. [NEW MATERIAL] DELAYING DISBURSEMENTS OR
 21 TRANSACTIONS.--

22 A. A broker-dealer or investment adviser may delay
 23 a disbursement or transaction from an account of an eligible
 24 adult or an account on which an eligible adult is a beneficiary
 25 if:

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1 (1) the broker-dealer, investment adviser or
2 qualified individual reasonably believes, after initiating an
3 internal review of the requested disbursement or transaction
4 and the suspected financial exploitation, that the requested
5 disbursement or transaction may result in financial
6 exploitation of an eligible adult; and

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

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

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

18 (c) provides, upon a request by the
19 securities division of the regulation and licensing department,
20 a status report of the internal review required pursuant to
21 Paragraph (1) of Subsection A of this section.

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

24 (1) a determination by the broker-dealer or
25 investment adviser that the disbursement or transaction will

1 not result in financial exploitation of the eligible adult; or
 2 (2) fifteen business days after the date on
 3 which the broker-dealer or investment adviser first delayed
 4 disbursement or transaction, unless either of the agencies
 5 requests that the broker-dealer or investment adviser extend
 6 the delay, in which case the delay shall expire no more than
 7 twenty-five business days after the date on which the broker-
 8 dealer or investment adviser first delayed disbursement or
 9 transaction unless otherwise terminated or extended by either
 10 of the agencies or an order of a court of competent
 11 jurisdiction.

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

21 **SECTION 8. [NEW MATERIAL] IMMUNITY FOR DELAYING**
 22 **DISBURSEMENTS OR TRANSACTIONS.--**A broker-dealer or investment
 23 adviser that, in exercising reasonable care, complies with
 24 Section 7 of the Protecting Vulnerable Adults from Financial
 25 Exploitation Act shall be immune from any administrative or

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1 civil liability that might otherwise arise from such delay in a
2 disbursement or transaction in accordance with this section.

3 SECTION 9. [NEW MATERIAL] TRAINING.--A qualified
4 individual, broker-dealer or investment adviser will be granted
5 the immunity outlined in Sections 4, 6 and 8 of the Protecting
6 Vulnerable Adults from Financial Exploitation Act only if that
7 person has completed training required by rule adopted or order
8 issued by the director of the securities division of the
9 regulation and licensing department.

10 SECTION 10. [NEW MATERIAL] RECORDS.--A broker-dealer or
11 investment adviser shall provide access to or copies of records
12 that are relevant to the suspected or attempted financial
13 exploitation of an eligible adult to agencies charged with
14 administering state adult protective services laws and to law
15 enforcement, either as part of a referral to the agency or to
16 law enforcement, or upon request of the agency or law
17 enforcement pursuant to an investigation. The records may
18 include historical records as well as records relating to the
19 most recent transaction or transactions that may comprise
20 financial exploitation of an eligible adult. All records made
21 available to agencies under this section shall not be
22 considered a public record as defined in Subsection G of
23 Section 14-2-6 NMSA 1978. Nothing in this provision shall
24 limit or otherwise impede the authority of the director of the
25 securities division of the regulation and licensing department

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1 to access or examine the books and records of broker-dealers
2 and investment advisers as otherwise provided by law.

3 SECTION 11. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2017.

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underscoring material = new
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