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## FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 2/17/17  
 LAST UPDATED 3/16/17 HB 326/HJCS

SHORT TITLE Protection of Vulnerable Adults SB \_\_\_\_\_

ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Related to portions of House Bills 146 and 325 and Senate Bill 187

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Office of the Attorney General (OAG)
- Aging and Long Term Services Department (ALTSD)
- Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of the second House Judiciary Committee Substitute

House Bill 326 would enact law to attempt to prevent the financial exploitation of vulnerable adults. “Financial exploitation” is defined as wrongfully taking assets, acts of commission or omission that would deceive an eligible adult in order to obtain control of that adult’s assets in such a way as to deprive that adult of the use of those assets or would wrongfully use those assets. Eligible adults are either over 65 years of age or incapacitated persons over 18 years of age (and “incapacitated” is defined in the bill).

Agents or others working for broker-dealers or investment advisers who “reasonably believe” that financial exploitation of an eligible adult must report that belief to the Securities Division of the RLD and to the Adult Protective Services (APS) of the ALTSD, and would be offered immunity from liability for such disclosures, both to individuals and to government agencies, if done “with reasonable care.” If the eligible adult had previously designated another person as his/her representative, the person reporting to ALTSD and RLD would also be required to notify

that person, unless that person were thought to be involved in the misuse of the adult's assets, and again, the agent would receive immunity for that revelation.

The immunity provided in this act to broker-dealers or investment advisors would be contingent upon their having received training in financial exploitation of adults, which would be developed by the director of the securities division of the Regulation and Licensing Department. Broker-dealers and investment advisers would be responsible for assuring that their registered employees in contact with eligible adults receive training in financial exploitation as well.

Agents are given the right to delay disbursement from or transactions in an eligible adult's accounts if they "reasonably believed" that the disbursement or transaction might be misappropriated, with a required notice of the delay within two business days to parties with access to the account, except those suspected at the time of the disclosure to be attempting to misappropriate the funds or assets. Courts could order further delay at the request of APS/ALTSD, RLD, or any other party, including the agent initially delaying the disbursement; the agent would again receive immunity for his/her actions in delaying the disbursement. In all of these cases of immunity granted to agents, the immunity would be granted only if the agent had completed relevant training specified by the RLD securities division. Agents would be required to turn over records of an eligible adult's financial status and transactions and the results of the agents' internal review of the affected account(s) to RLD and to ASP as requested. There would be no change in current law regarding regulatory agency access to records of broker-dealers and investment advisers.

## **FISCAL IMPLICATIONS**

AOC and AODA both anticipate the possibility that there would be more prosecutions for exploitation of adults if this bill is enacted, and that that might slightly increase the costs for the district attorneys and for the courts. Otherwise, no financial implications for state agencies are noted, except the cost of writing new regulations at APS/ALTSD and RLD and following up on complaints received.

RLD commented "HB 326 doesn't create any fiscal implications. The training requirement created in Section 9 will be implemented in the normal course of business and will not require any additional infrastructure, resources, budget, or staff. Additionally, the agencies are already receiving reports and conducting investigations, so any reports made under HB 326 would not require additional staff or resources. It is not anticipated that this bill would create such a high influx of reports that personnel or infrastructure changes would be needed."

## **SIGNIFICANT ISSUES**

ALTSD makes note of current issues regarding its work to protect vulnerable adults:

The Adult Protective Services Division (APS) of the Aging & Long-Term Services Department (ALTSD) is responsible for protecting vulnerable adults by providing for the detection, correction and elimination of abuse, neglect and financial exploitation through a program of short-term services for adults in need of protective services or protective placement. The APS Act, § 27-7-30, states: "Any person, including financial institutions, having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the department [APS]." In the event a person has reasonable cause to believe that someone is being abused, neglected or

exploited and does not report to APS, the APS may assess a civil penalty of up to \$10,000 per violation.

Financial exploitation, the unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise, is a vastly underreported crime perpetrated against seniors. As such, it is a growing concern for APS and the people of New Mexico.

According to the National Adult Protective Services Association (NAPSA), 90% of financial abusers are family members or trusted others, and almost one in ten financial abuse victims will turn to Medicaid due to their own monies or social security checks being stolen from them. In addition, according to NAPSA, the most common ways family members and trusted others exploit seniors is through:

- Using a power of attorney, given by the senior to allow another person to handle his or her finances;
- Taking advantages of joint bank accounts;
- Using ATM cards and stealing checks to withdraw monies from the senior's bank accounts;
- Threatening to abandon or otherwise harm the senior unless he or she gives the abuser money;
- Refusing to obtain needed care and medical services for the senior in order to keep the senior's assets available to the abuser; and
- Stealing the victim's social security checks.

While not all financial exploitation includes "securities," which is not defined in the bill, any attempt to mitigate financial exploitation may reduce the isolation and dependency of the senior on his or her abuser.

### **ADMINISTRATIVE IMPLICATIONS**

As noted by AODA, "HB326 should give the district attorneys greater access to records in cases of suspected financial exploitation, while protecting those records from disclosure under the Public Records Act."

RLD states that "The securities division will have to issue an order outlining the curriculum for training and give explanation of the new law and how to make reports. The curriculum will be updated as new practices or information is uncovered."

**RELATIONSHIP** to House Bill 146 and Senate Bill 187, which both describe types of exploitation of aged and incapacitated adults, including financial exploitation, and House Bill 325, which amends the New Mexico Uniform Securities Act to provide enhanced criminal penalties for certain violations if the victim is over the age of sixty.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Seniors and incapacitated adults would not be given the added protection from financial schemes and scams offered by the bill, and financial advisors and investment counselors would not be given education by ALTSD and/or RLD regarding their responsibilities under the bill.