

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0339.02 Jerry Barry x4341

HOUSE BILL 17-1253

HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

Crowder,

House Committees

Public Health Care & Human Services

Senate Committees

Finance

A BILL FOR AN ACT

101 CONCERNING THE "PROTECTION OF VULNERABLE ADULTS FROM
102 FINANCIAL EXPLOITATION ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

If specified, if licensed securities professionals (qualified individuals), while acting within the scope of their employment, reasonably suspect that an elderly or at-risk person is the subject of financial exploitation, the bill requires the broker-dealer or investment adviser to report to the commissioner of securities (commissioner). The commissioner is required to forward the report to local law enforcement

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 20, 2017

SENATE
Amended 2nd Reading
April 19, 2017

HOUSE
3rd Reading Unamended
April 4, 2017

HOUSE
2nd Reading Unamended
April 3, 2017

and to the department of human services. The commissioner has access to records to conduct an investigation, but the records are not subject to an open records request.

The bill also authorizes the qualified individual to notify any third party designated by or associated with the elderly or at-risk person of any suspected financial exploitation. It also authorizes the broker-dealer or investment adviser to delay disbursement of a transaction that might result in financial exploitation.

The bill provides immunity to qualified individuals, broker-dealers, and investment advisers making reports, disclosures, or delaying disbursements under the bill.

For qualified individuals who are also required to report mistreatment of an elderly or at-risk person pursuant to the "Colorado Criminal Code" (code), the bill clarifies that, if the individual makes a report pursuant to the code, the individual does not have to submit a report with the commissioner, and that filing a report with the commissioner does not satisfy the individual's obligation pursuant to the code.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds and declares that:

4 (1) Financial exploitation is the fastest-growing category of elder
5 abuse in many states;

6 (2) According to the 2010 Investor Protection Trust Elder Fraud
7 Survey, one out of every five citizens sixty-five years of age or older has
8 been victimized by a financial fraud;

9 (3) This act is modeled on legislation proposed by the North
10 American Securities Administrators Association;

11 (4) The Colorado commissioner of securities and the Colorado
12 division of securities are committed to protecting retail investors and are
13 well-positioned to intercede on behalf of vulnerable persons;

14 (5) However, to be successful in combating financial exploitation,
15 the commissioner and the division must be made aware of the exploitation

1 at the time that it occurs;

2 (6) Mandatory reporting by persons licensed by the division of
3 securities ensures that the division is alerted to cases of potential financial
4 exploitation as early as possible, when intervention may be able to
5 prevent harm or limit the damage to victims of financial exploitation;

6 (7) A mandatory reasonable-belief reporting requirement, coupled
7 with immunity for reporting, provides an appropriate balance of
8 incentives to encourage licensed securities professionals to report
9 potential financial exploitation;

10 (8) It is also important that licensed securities professionals are
11 aware of the reporting requirement and educated on the signs of suspected
12 financial exploitation; and

13 (9) It is appropriate for the commissioner of securities to develop
14 training programs on financial exploitation and to consider establishing
15 by rule requirements for securities professionals to complete training in
16 this area.

17 **SECTION 2.** In Colorado Revised Statutes, **add** part 10 to article
18 51 of title 11 as follows:

19 PART 10

20 PROTECT VULNERABLE ADULTS

21 FROM FINANCIAL EXPLOITATION ACT

22 **11-51-1001. Short title.** THE SHORT TITLE OF THIS PART 10 IS THE
23 "PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION
24 ACT".

25 **11-51-1002. Definitions.** AS USED IN THIS PART 10, UNLESS THE
26 CONTEXT OTHERWISE REQUIRES:

27 (1) "BROKER-DEALER" HAS THE SAME MEANING AS IN SECTION

1 11-51-201 (2).

2 (2) "ELIGIBLE ADULT" MEANS:

3 (a) A PERSON SEVENTY YEARS OF AGE OR OLDER; OR

4 (b) AN INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO IS
5 SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE
6 INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR
7 HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT
8 UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE
9 DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

10 (3) "FINANCIAL EXPLOITATION" MEANS AN ACT OR OMISSION
11 COMMITTED BY A PERSON WHO:

12 (a) USES DECEPTION, HARASSMENT, INTIMIDATION, OR UNDUE
13 INFLUENCE TO PERMANENTLY OR TEMPORARILY DEPRIVE AN ELIGIBLE
14 ADULT OF THE USE, BENEFIT, OR POSSESSION OF ANY THING OF VALUE;

15 (b) EMPLOYS THE SERVICES OF A THIRD PARTY FOR THE PROFIT OR
16 ADVANTAGE OF THE PERSON OR ANOTHER PERSON TO THE DETRIMENT OF
17 THE ELIGIBLE ADULT;

18 (c) FORCES, COMPELS, COERCES, OR ENTICES AN ELIGIBLE ADULT
19 TO PERFORM SERVICES FOR THE PROFIT OR ADVANTAGE OF THE PERSON OR
20 ANOTHER PERSON AGAINST THE WILL OF THE ELIGIBLE ADULT; OR

21 (d) MISUSES THE PROPERTY OF AN ELIGIBLE ADULT IN A MANNER
22 THAT ADVERSELY AFFECTS THE ELIGIBLE ADULT'S ABILITY TO RECEIVE
23 HEALTH CARE OR HEALTH CARE BENEFITS OR TO PAY BILLS FOR BASIC
24 NEEDS OR OBLIGATIONS.

25 (4) "INVESTMENT ADVISER" HAS THE SAME MEANING AS IN
26 SECTION 11-51-201 (9.5).

27 (5) "INVESTMENT ADVISER REPRESENTATIVE" HAS THE SAME

1 MEANING AS IN SECTION 11-51-201 (9.6).

2 (6) "QUALIFIED INDIVIDUAL" MEANS ANY SALES REPRESENTATIVE,
3 INVESTMENT ADVISER REPRESENTATIVE, OR PERSON WHO SERVES IN A
4 SUPERVISORY, COMPLIANCE, OR SENIOR INVESTOR PROTECTION CAPACITY
5 FOR A BROKER-DEALER OR INVESTMENT ADVISER.

6 (7) "SALES REPRESENTATIVE" HAS THE SAME MEANING AS IN
7 SECTION 11-51-201 (14).

8 **11-51-1003. Governmental disclosures - immunity.** (1) IF A
9 QUALIFIED INDIVIDUAL, WHILE ACTING WITHIN THE SCOPE OF
10 EMPLOYMENT, REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF
11 AN ELIGIBLE ADULT MAY HAVE OCCURRED, MAY HAVE BEEN ATTEMPTED,
12 OR MAY BE OR IS BEING ATTEMPTED, THE BROKER-DEALER OR INVESTMENT
13 ADVISER SHALL PROMPTLY NOTIFY THE COMMISSIONER OF SECURITIES
14 APPOINTED PURSUANT TO SECTION 11-51-701. THE SECURITIES
15 COMMISSIONER SHALL FORWARD A COPY OF THE REPORT WITHIN ONE
16 BUSINESS DAY TO LOCAL LAW ENFORCEMENT AND TO THE COUNTY
17 DEPARTMENT OF HUMAN OR SOCIAL SERVICES HANDLING ADULT
18 PROTECTIVE SERVICES.

19 (2) A QUALIFIED INDIVIDUAL WHO, IN GOOD FAITH AND
20 EXERCISING REASONABLE CARE, MAKES A DISCLOSURE OF INFORMATION
21 PURSUANT TO THIS SECTION IS IMMUNE FROM ADMINISTRATIVE OR CIVIL
22 LIABILITY THAT MIGHT OTHERWISE ARISE FROM THE DISCLOSURE OR FOR
23 ANY FAILURE TO NOTIFY THE CUSTOMER OF THE DISCLOSURE.

24 **11-51-1004. Third-party disclosures - immunity.** (1) IF A
25 QUALIFIED INDIVIDUAL, WHILE ACTING WITHIN THE SCOPE OF
26 EMPLOYMENT, REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF
27 AN ELIGIBLE ADULT MAY HAVE OCCURRED, BEEN ATTEMPTED, OR MAY BE

1 OR IS BEING ATTEMPTED, A QUALIFIED INDIVIDUAL MAY NOTIFY ANY THIRD
2 PARTY PREVIOUSLY DESIGNATED BY OR REASONABLY ASSOCIATED WITH
3 THE ELIGIBLE ADULT. DISCLOSURE MAY NOT BE MADE TO ANY
4 DESIGNATED THIRD PARTY THAT IS SUSPECTED OF FINANCIAL
5 EXPLOITATION OR OTHER ABUSE OF THE ELIGIBLE ADULT.

6 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF
7 THIS SECTION, IF THE QUALIFIED INDIVIDUAL IS ALSO A PERSON LISTED IN
8 SECTION 18-6.5-108 (1)(b) AND THE QUALIFIED INDIVIDUAL HAS MADE A
9 REPORT TO LAW ENFORCEMENT AS REQUIRED BY SECTION 18-6.5-108 (1),
10 THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION DOES NOT
11 HAVE TO BE FILED WITH THE COMMISSIONER.

12 (3) A QUALIFIED INDIVIDUAL WHO, IN GOOD FAITH AND
13 EXERCISING REASONABLE CARE, COMPLIES WITH THIS SECTION IS IMMUNE
14 FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE
15 ARISE FROM THE DISCLOSURE.

16 **11-51-1005. Delaying disbursements - immunity.** (1) A
17 BROKER-DEALER OR INVESTMENT ADVISER MAY DELAY A DISBURSEMENT
18 FROM AN ACCOUNT OF AN ELIGIBLE ADULT, OR AN ACCOUNT ON WHICH AN
19 ELIGIBLE ADULT IS A BENEFICIARY, IF:

20 (a) THE BROKER-DEALER OR INVESTMENT ADVISER, REASONABLY
21 BELIEVES, AFTER INITIATING AN INTERNAL REVIEW OF THE REQUESTED
22 DISBURSEMENT AND THE SUSPECTED FINANCIAL EXPLOITATION, THAT THE
23 REQUESTED DISBURSEMENT MAY RESULT IN FINANCIAL EXPLOITATION OF
24 AN ELIGIBLE ADULT; AND

25 (b) THE BROKER-DEALER OR INVESTMENT ADVISER:

26 (I) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS
27 DAYS AFTER THE REQUESTED DISBURSEMENT, PROVIDES WRITTEN

1 NOTIFICATION OF THE DELAY AND THE REASON FOR THE DELAY TO ALL
2 PARTIES AUTHORIZED TO TRANSACT BUSINESS ON THE ACCOUNT, UNLESS
3 ANY SUCH PARTY IS REASONABLY BELIEVED TO HAVE ENGAGED IN
4 SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION OF THE ELIGIBLE
5 ADULT;

6 (II) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS
7 DAYS AFTER THE REQUESTED DISBURSEMENT, NOTIFIES THE REPORTING
8 AGENCIES; AND

9 (III) CONTINUES ITS INTERNAL REVIEW OF THE SUSPECTED OR
10 ATTEMPTED FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT, AS
11 NECESSARY, AND REPORTS THE REVIEW'S RESULTS TO THE COMMISSIONER
12 WITHIN SEVEN BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT.

13 (2) ANY DELAY OF A DISBURSEMENT AS AUTHORIZED BY THIS
14 SECTION EXPIRES UPON THE SOONER OF:

15 (a) A DETERMINATION BY THE BROKER-DEALER OR INVESTMENT
16 ADVISER THAT THE DISBURSEMENT WILL NOT RESULT IN FINANCIAL
17 EXPLOITATION OF THE ELIGIBLE ADULT; OR

18 (b) FIFTEEN BUSINESS DAYS AFTER THE DATE ON WHICH THE
19 BROKER-DEALER OR INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT
20 OF THE FUNDS, UNLESS THE COMMISSIONER REQUESTS THAT THE
21 BROKER-DEALER OR INVESTMENT ADVISER EXTEND THE DELAY. IF A
22 DELAY IS REQUESTED, THE DELAY EXPIRES NO MORE THAN TWENTY-FIVE
23 BUSINESS DAYS AFTER THE DATE ON WHICH THE BROKER-DEALER OR
24 INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT OF THE FUNDS
25 UNLESS SOONER TERMINATED OR EXTENDED BY THE COMMISSIONER OR AN
26 ORDER OF A COURT OF COMPETENT JURISDICTION.

27 (3) A COURT OF COMPETENT JURISDICTION MAY ALSO ENTER AN

1 ORDER EXTENDING THE DELAY OF THE DISBURSEMENT OF FUNDS OR MAY
2 ORDER OTHER PROTECTIVE RELIEF BASED ON THE PETITION OF THE
3 COMMISSIONER OF SECURITIES, PROTECTIVE SERVICES FOR ELIGIBLE
4 ADULTS, THE BROKER-DEALER OR INVESTMENT ADVISER THAT INITIATED
5 THE DELAY UNDER THIS SECTION, OR OTHER INTERESTED PARTY.

6 (4) A BROKER-DEALER OR INVESTMENT ADVISER WHO, IN GOOD
7 FAITH AND EXERCISING REASONABLE CARE, COMPLIES WITH THIS SECTION
8 IS IMMUNE FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT
9 OTHERWISE ARISE FROM THE DELAY IN A DISBURSEMENT IN ACCORDANCE
10 WITH THIS SECTION.

11 **11-51-1006. Immunity for nondisclosure.** A QUALIFIED
12 INDIVIDUAL WHO, IN GOOD FAITH AND EXERCISING REASONABLE CARE,
13 FAILS TO REPORT PURSUANT TO THIS PART 10 IS IMMUNE FROM ANY
14 ADMINISTRATIVE, CRIMINAL, OR CIVIL LIABILITY FOR HIS OR HER FAILURE
15 TO REPORT.

16 **11-51-1007. Records.** A BROKER-DEALER OR INVESTMENT
17 ADVISER SHALL PROVIDE ACCESS TO OR COPIES OF RECORDS THAT ARE
18 RELEVANT TO THE SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION
19 OF AN ELIGIBLE ADULT TO AGENCIES CHARGED WITH ADMINISTERING
20 STATE ADULT PROTECTIVE SERVICES LAWS AND TO LAW ENFORCEMENT,
21 EITHER AS PART OF A REFERRAL TO THE AGENCY OR TO LAW
22 ENFORCEMENT, OR UPON REQUEST OF THE AGENCY OR LAW ENFORCEMENT
23 PURSUANT TO AN INVESTIGATION. THE RECORDS MAY INCLUDE
24 HISTORICAL RECORDS AS WELL AS RECORDS RELATING TO THE MOST
25 RECENT TRANSACTION OR TRANSACTIONS THAT MAY COMPRISE FINANCIAL
26 EXPLOITATION OF AN ELIGIBLE ADULT. ALL RECORDS MADE AVAILABLE TO
27 AGENCIES UNDER THIS SECTION ARE NOT PUBLIC RECORDS AS DEFINED IN

1 PART 2 OF ARTICLE 72 OF TITLE 24. NOTHING IN THIS SECTION LIMITS OR
2 OTHERWISE IMPEDES THE AUTHORITY OF THE STATE SECURITIES
3 COMMISSIONER TO ACCESS OR EXAMINE THE BOOKS AND RECORDS OF
4 BROKER-DEALERS AND INVESTMENT ADVISERS AS OTHERWISE PROVIDED
5 BY LAW.

6 **11-51-1008. Multiple duties to report.** COMPLIANCE WITH THIS
7 PART 10 DOES NOT DISCHARGE THE DUTY OF A MANDATORY REPORTER
8 UNDER SECTION 18-6.5-108 TO REPORT MISTREATMENT TO A LOCAL LAW
9 ENFORCEMENT AGENCY.

10 **SECTION 3. Effective date - applicability.** This act takes effect
11 July 1, 2017, and applies to suspected or attempted financial exploitation
12 occurring on or after said date.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.