

SENATE BILL NO. 315

March 24, 2021, Introduced by Senator RUNESTAD and referred to the Committee on Insurance and Banking.

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:

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TITLE

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An act to enact the uniform securities act (2002) relating to
the issuance, offer, sale, or purchase of securities; to prohibit
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 certain actions to protect certain**
 7 **specified adults from financial exploitation; to prescribe the**
 8 **powers and duties of certain state governmental officers and**
 9 **agencies; and to repeal acts and parts of acts.**

10 ARTICLE 5A

11 FINANCIAL EXPLOITATION OF SPECIFIED ADULTS

12 Sec. 531. As used in this article:

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

16 (b) "Financial exploitation" means any of the following:

17 (i) The wrongful or unauthorized taking, withholding,
 18 appropriation, or use of a specified adult's funds or securities.

19 (ii) Any act or omission by a person, including through the use
 20 of a power of attorney, guardianship, or any other authority
 21 regarding a specified adult, to do either of the following:

22 (A) Obtain control, through deception, intimidation, or undue
 23 influence, over the specified adult's money, assets, or property.

24 (B) Convert the specified adult's money, assets, or property.

25 (c) "Specified adult" means either of the following:

26 (i) An individual who is 65 years of age or older.

27 (ii) An individual who is 18 years of age or older and who the
 28 broker-dealer or investment advisor reasonably believes has a
 29 mental or physical impairment that renders the individual unable to

1 protect his or her own interests.

2 Sec. 533. (1) A broker-dealer or investment advisor may place
3 a temporary hold on a disbursement of funds or securities from an
4 account of a specified adult, or any other transaction concerning
5 that account, if all of the following are met:

6 (a) The broker-dealer or investment advisor reasonably
7 believes that financial exploitation of the specified adult has
8 occurred, is occurring, has been attempted, or will be attempted.

9 (b) Within 2 business days after the date that the broker-
10 dealer or investment advisor first placed the temporary hold on the
11 disbursement of funds or securities, or other transaction, the
12 broker-dealer or investment advisor provides notification,
13 electronically or in writing, that is maintained as correspondence
14 under section 411(3), of the reason for the temporary hold to all
15 of the following:

16 (i) All parties who are authorized to transact business on the
17 account, unless a party is unavailable or the broker-dealer or
18 investment advisor reasonably believes that the party has engaged,
19 is engaged, or will engage in the financial exploitation of the
20 specified adult.

21 (ii) To any individual who the specified adult has previously
22 designated as authorized to receive information about the account,
23 unless that individual is unavailable or the broker-dealer or
24 investment advisor reasonably believes that the individual has
25 engaged, is engaged, or will engage in the financial exploitation
26 of the specified adult.

27 (c) The broker-dealer or investment advisor immediately
28 initiates an internal review of the facts and circumstances that
29 caused the broker-dealer or investment advisor to reasonably

1 believe that the financial exploitation of the specified adult has
2 occurred, is occurring, has been attempted, or will be attempted.

3 (2) A temporary hold authorized under this section expires not
4 later than 15 business days after the date that the broker-dealer
5 or investment advisor first placed the temporary hold on the
6 disbursement of funds or securities, or other transaction, unless
7 otherwise terminated or extended by the administrator, another
8 agency of competent jurisdiction, or a court of competent
9 jurisdiction, or unless extended under subsection (3).

10 (3) If the broker-dealer's or investment advisor's internal
11 review of the facts and circumstances under subsection (1)(c)
12 supports the broker-dealer's or investment advisor's reasonable
13 belief that the financial exploitation of the specified adult has
14 occurred, is occurring, has been attempted, or will be attempted, a
15 broker-dealer or investment advisor may extend a temporary hold
16 authorized under this section for not longer than 10 business days
17 following the date authorized under subsection (2), unless
18 otherwise terminated or extended by the administrator, another
19 agency of competent jurisdiction, or a court of competent
20 jurisdiction.

21 (4) Subsections (2) and (3) do not require the administrator
22 to extend or terminate a temporary hold authorized under this
23 section.

24 Sec. 535. (1) A broker-dealer or investment advisor that takes
25 action under this article shall establish and maintain written
26 procedures reasonably designed to achieve compliance with this
27 article, including, but not limited to, procedures related to the
28 identification, escalation, and reporting of matters related to the
29 financial exploitation of specified adults.

1 (2) The procedures required under subsection (1) must identify
2 the title of each individual who is authorized to place, terminate,
3 or extend a temporary hold on behalf of the broker-dealer or
4 investment advisor under this article. Only an individual who
5 serves in a supervisory, compliance, or legal capacity for the
6 broker-dealer or investment advisor is eligible for identification
7 as an authorized individual under this subsection.

8 Sec. 537. (1) Subject to 15 USC 78o(i)(1) and 15 USC 80b-18a,
9 and subject to the record-keeping requirements provided in section
10 411, a broker-dealer or investment advisor shall retain records
11 related to compliance with this article and ensure that those
12 records are readily available to the department on request. The
13 retained records must include records of all of the following:

14 (a) Any requests for a disbursement or other transaction that
15 a broker-dealer or investment advisor reasonably believed to
16 constitute financial exploitation of a specified adult and the
17 resulting temporary hold.

18 (b) Any finding of a reasonable belief that financial
19 exploitation has occurred, is occurring, has been attempted, or
20 will be attempted underlying a decision to place a temporary hold
21 on a disbursement or other transaction.

22 (c) The name and title of any broker-dealer or investment
23 advisor that authorized a temporary hold on a disbursement or other
24 transaction.

25 (d) Any notifications to relevant parties under section
26 533(1)(b).

27 (e) Any internal review of the facts and circumstances
28 conducted under section 533(1)(c).

29 (2) A broker-dealer or investment adviser shall provide access

1 to or copies of the records retained under subsection (1) to
2 agencies of this state charged with administering state adult
3 protective services laws and to law enforcement, either as part of
4 a referral to the agency or to law enforcement, or upon request of
5 the agency or law enforcement pursuant to an investigation. The
6 records may include historical records as well as records relating
7 to the most recent transaction or transactions that may comprise
8 financial exploitation or suspected financial exploitation of a
9 specified adult. All records made available to agencies or law
10 enforcement under this subsection are not subject to the freedom of
11 information act, 1976 PA 442, MCL 15.231 to 15.246. This subsection
12 does not limit or otherwise impede the authority of the
13 administrator to access or examine the books and records of broker-
14 dealers and investment advisers as otherwise provided by law.

15 Sec. 539. (1) This article does not require a broker-dealer or
16 investment advisor to place temporary holds on disbursements of
17 funds or securities from the accounts of specified adults or other
18 transactions concerning those accounts.

19 (2) A broker-dealer or investment advisor that relies on this
20 article shall develop and document training policies or programs
21 reasonably designed to ensure that the broker-dealer or investment
22 advisor complies with the requirements of this article.

23 (3) A broker-dealer's or investment advisor's reasonable
24 belief that an individual who is 18 years of age or older has a
25 mental or physical impairment that renders the individual unable to
26 protect his or her own interests may be based on the facts and
27 circumstances observed in the broker-dealer's or investment
28 advisor's business relationship with that individual.

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

1 after the date it is enacted into law.