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BILL ANALYSIS

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House Bill 4197 (Substitute H-1 as passed by the House)
Sponsor: Representative Angela Witwer
House Committee: Insurance and Financial Services
Senate Committee: Finance, Insurance, and Consumer Protection

Date Completed: 11-1-23

INTRODUCTION

The bill would allow a broker-dealer or investment adviser to delay a disbursement of funds or other transaction if the broker-dealer or investment adviser suspected that a client or customer was being financially exploited. The delay would expire either 15 days after the date that the broker-dealer or investment adviser first delayed the disbursement or transaction, by court order, or on the day a broker-dealer or investment adviser determined that the disbursement or transaction would not result in covered financial exploitation of the client or customer. A broker-dealer or investment adviser could extend the delay under certain circumstances for up to 40 days.

If a broker-dealer or investment adviser suspected a caregiver of financial exploitation of a vulnerable adult (covered financial exploitation), the broker-dealer or investment adviser would have to report that activity to a law enforcement agency or adult protective services. The bill would establish additional reporting and notification requirements, including the requirement that a law enforcement agency or adult protective services notify the office of a county prosecutor within 15 days after receiving a report of covered financial exploitation.

Additionally, the bill would require a broker-dealer or investment adviser to retain certain records, which would have to be readily available to the Department of Licensing and Regulatory Affairs (LARA) and adult protective services and law enforcement agencies, if applicable. Certain information would be exempt from the Freedom of Information Act (FOIA).

FISCAL IMPACT

A violation of the Act could result in legal action on the part of the Attorney General or the appropriate prosecutor's office. While this could result in additional expenditures, it is likely that such costs would be adequately covered by existing appropriations. The bill would have a minimal fiscal impact on State and local law enforcement agencies. Certain communication tasks required under the bill would be assumed by an agency's existing resources.

The bill would have an indeterminate, but likely minor, negative fiscal impact on the Department of Health and Human Services (DHHS). The impact on the DHHS would depend on if the bill resulted in an increase in the number of reports of adult abuse, neglect, and/or exploitation to the Adult Protective Services unit within the DHHS, and if those reports resulted in an increase in investigative caseloads for the unit. Any increase in caseload would be covered by existing departmental appropriations.

Proposed MCL 451.531 et al.

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CONTENT

The bill would add Article 5A (Financial Exploitation) to the Uniform Securities Act to do the following:

- Allow a broker-dealer or investment adviser to delay a disbursement of funds or a transaction if the broker-dealer or investment adviser suspected or detected financial exploitation of a client or customer.
- Require, if a broker-dealer or investment adviser suspected or detected covered financial exploitation of a vulnerable adult, the broker-dealer or investment adviser to report that activity to a law enforcement agency or adult protective services.
- Establish notification and reporting requirements.
- Require, within 15 business days after it received a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser, a law enforcement agency or adult protective services to notify the office of a county prosecutor.
- Allow a broker-dealer or investment adviser who was not able to contact a law enforcement agency or adult protective services or who did not receive a notification of receipt as required to notify the office of a county prosecutor.
- Require a broker-dealer or investment adviser to retain specified records related to compliance with Article 5A's provisions and require that those records be readily available to the LARA.
- Require a broker-dealer or investment adviser to provide access to or copies of relevant records to adult protective services and to law enforcement agencies, if applicable.
- Exempt certain information, such as the identity of an individual who was the suspected or confirmed victim of covered financial exploitation, from disclosure under FOIA.
- Provide that a broker-dealer or investment adviser that exercised good faith in an action, determination, omission, or practice would be immune from any administrative or civil liability that might otherwise arise while taking action under Article 5A.

The bill would take effect 90 days after its enactment.

Definitions

Under the bill, "covered financial exploitation" would mean financial exploitation of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship. "Caregiver" would mean a parent or other relative responsible for the health and safety of an individual, or a guardian, conservator, or any other individual with legal or fiduciary obligations to an individual.

The bill would define "financial exploitation" as any of the following:

- A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.
- A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that results or is intended to result in depriving another individual of rightful access to or use of benefits, resources, belongings, or assets.

"Vulnerable adult" would mean an adult who, because of mental or physical impairment or advanced age, is unable to protect himself or herself from covered financial exploitation.

"Agency of competent jurisdiction" would mean an entity authorized to investigate or review suspicions of abuse or exploitation, including, but not limited to, adult protective services and a law enforcement agency. "Adult protective services" would mean the office, division, or unit under the Department of Health and Human Services (DHHS) that is charged with the investigation of abuse, neglect, or exploitation of vulnerable individuals under the Social Welfare Act.

Delays on Disbursements of Funds or Transactions

The bill would allow a broker-dealer or investment adviser to delay a disbursement or transaction for further investigation or examination of available facts if the broker-dealer or advisor suspected or detected covered financial exploitation of a client or customer. On investigation or examination of available facts, if the broker-dealer or investment adviser continued to suspect or detect covered financial exploitation, the broker-dealer or investment adviser could continue the delay. ("Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Investment adviser" generally means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.)

If a broker-dealer's or investment adviser's investigation supported the suspicion or detection of covered financial exploitation, a broker-dealer or investment adviser could extend a delay for at most 40 business days. If a broker-dealer or investment adviser were informed by a law enforcement agency, adult protective services, or another agency of competent jurisdiction that the agency was investigating covered financial exploitation, the broker-dealer or investment adviser also could extend the term of a delay authorized until the broker-dealer or investment adviser was informed of the dismissal of the reported incident by the relevant agencies.

The delay would expire either 15 days after the date that the broker-dealer or investment adviser first delayed the disbursement or transaction, or by court order, or on the day a broker-dealer or investment adviser determined that the disbursement or transaction would not result in covered financial exploitation of the client or customer.

Notification Requirements

If a broker-dealer or investment adviser suspected or detected covered financial exploitation of a client or customer, the broker-dealer or investment adviser could provide notification of the covered financial exploitation to any of the following:

- An agency of competent jurisdiction.
- A reasonably associated individual, unless that individual was unavailable or to be engaged, was engaged, or would engage in covered financial exploitation of the client or customer.
- Any third party previously designated by the client or customer to receive information about the account, unless that individual was unavailable or believed to be engaged, was engaged, or would engage in covered financial exploitation of the client or customer.

Within two business days after the date that the broker-dealer or investment advisor first delayed the disbursement or transaction, the broker-dealer or investment advisor would need to provide written notification of the reason for the delay. The notification would have to be provided to all the following:

- The administrator and an agency of competent jurisdiction.
- All persons who were authorized to transact business on the account, unless a person was unavailable or the broker-dealer or investment advisor reasonably believed that the person had engaged, was engaged, or would engage in covered financial exploitation of the client or customer.
- Any individual who the client or customer had previously designated as authorized to receive information about the account, unless the individual was unavailable or the broker-dealer or investment advisor reasonably believed that the individual had engaged, was engaged, or would engage in covered financial exploitation of the client or customer.

Reporting Requirements

If a broker-dealer or investment advisor suspected or detected covered financial exploitation of a vulnerable adult, the broker-dealer or investment advisor would have to report that activity to a law enforcement agency or adult protective services. A broker-dealer or investment advisor would not be required to make a report of suspected covered financial exploitation to a law enforcement agency or adult protective services if, after investigation or examination of available facts, the broker-dealer or investment advisor determined that covered financial exploitation had not occurred or was not occurring and that no action was necessary.

Subject to Federal law and the Act's other recordkeeping requirements, a broker-dealer or investment advisor who acted under Article 5A would have to provide to the administrator or an agency of competent jurisdiction access to or copies of any written procedures the broker-dealer or investment advisor adopted, maintained, and implemented that were reasonably designed to achieve compliance with Article 5A. This would include procedures related to the identification, escalation, and reporting of matters related to the covered financial exploitation of vulnerable adults. Only an individual who served in a supervisory, compliance, or legal capacity for the broker-dealer or investment advisor would be eligible for identification as an individual authorized to place, terminate, or extend a delay on behalf of the broker-dealer or investment advisor.

A report of suspected or detected covered financial exploitation made by a broker-dealer or investment advisor would have to include the name of the individual believed to be the victim, a description of the suspected or detected covered financial exploitation, and a designated contact for notices. If a report were made by telephone, the law enforcement agency or adult protective services that received the report would have to make a written report of the information provided in the telephonic report.

Not more than 15 business days after it received a report of suspected or detected covered financial exploitation from a broker-dealer or investment advisor, the law enforcement agency or adult protective services that received the report would have to provide written notification to the designated contact of the broker-dealer or investment advisor that clearly indicated whether the reported incident was under investigation or had been referred to a law enforcement agency for investigation. As soon as practicable after the investigation, the law enforcement agency or adult protective services would have to notify the broker-dealer or investment advisor of the disposition of the reported incident.

Not more than 15 business days after it received a report of suspected or detected covered financial exploitation from a broker-dealer or investment adviser, the law enforcement agency or adult protective services would have to notify the office of a county prosecutor. This notice would have to be made in a manner prescribed by the Attorney General (AG) and would have to include a copy of each report submitted to or committed to written form by the law enforcement agency or adult protective services and the response to the report by the law enforcement agency or adult protective services and any action taken based on the report. If a broker-dealer or investment adviser who attempted to make a report of suspected or detected covered financial exploitation was unable to communicate with law enforcement or adult protective services to make the report, or if a law enforcement agency or adult protective services that received a report failed to provide notification, the broker-dealer or investment adviser could notify the office of a county prosecutor. Notification would have to be made in a manner prescribed by the AG.

The bill would require a broker-dealer or investment adviser to provide access to any records related to compliance with the bill and ensure that those records were readily available to LARA on request. The retained records would need to include records of all the following:

- Any requests for a disbursement or other transaction that a broker-dealer or investment advisor reasonably believed to constitute covered financial exploitation of a vulnerable adult and the resulting temporary delay.
- Any finding of a reasonable belief that covered financial exploitation had occurred, was occurring, had been attempted, or would be attempted underlying a decision to place a temporary delay on a disbursement or other transaction.
- The name and title of any broker-dealer or investment adviser who authorized a temporary delay on a disbursement or other transaction.
- Any notifications to relevant parties pertaining to the temporary delay.
- Any investigation or examination of available facts.

A broker-dealer or investment adviser would have to provide access to or copies of relevant records to adult protective services and to law enforcement agencies, either as part of a referral to or on request of adult protective services or law enforcement. The records could include historical records as well as records relating to the most recent transaction or transactions that could constitute covered financial exploitation. All records made available to agencies or law enforcement would not be subject to FOIA. These provisions would not limit or otherwise impede the authority of the Administrator to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Protected Information

A law enforcement agency, adult protective services, or county prosecutor could not disclose the identity of an individual or broker-dealer or investment adviser who made a report of suspected or detected covered financial exploitation without the consent of the individual or the broker-dealer or investment adviser; however, the bill would not prohibit a disclosure made by adult protective services to a law enforcement agency or by a law enforcement agency or adult protective services to a county prosecutor as required, or a disclosure required in a civil or criminal proceeding. A law enforcement agency, adult protective services, or county prosecutor could not disclose the identity, or personal or account information, of an individual that was the subject of a report of suspected or detected covered financial exploitation without that individual's consent, except under certain circumstances, such as if required in a civil or criminal proceeding.

The identity of an individual or broker-dealer or investment adviser who made a report, and the identity of an individual that was the suspected or confirmed victim of covered financial exploitation or his or her personal account information, would be exempt from disclosure under certain sections of FOIA.

Other Provisions

Notwithstanding any provision of law to the contrary, an agency of competent jurisdiction could disclose to any reporting or notifying broker-dealer or investment adviser the general status or final disposition of an investigation that arose from a report made by the broker-dealer or investment adviser.

A broker-dealer or investment adviser that exercised good faith in an action, determination, omission, or practice under Article 5A would be immune from any administrative or civil liability that might otherwise arise from those activities.

Article 5A would *not* do any of the following:

- Limit the responsibilities of a law enforcement agency to enforce the laws of the State or preclude a law enforcement agency from reporting and investigating, as appropriate, alleged criminal conduct.
- Limit the ability or authority of a broker-dealer or investment adviser to take lawful action under local, State, or Federal law or private agreement or report or prevent fraud or other illegal activity related to the broker dealer's or investment adviser's operations or the assets of a client or customer that were held by the broker-dealer or investment adviser.
- Restrict or prohibit an individual, other than an individual who was acting as an employee of a broker-dealer or investment adviser, who suspected or detected that covered financial exploitation of an individual had occurred or was being attempted by another individual from making a report to a law enforcement agency or adult protective services.
- Limit the responsibilities of adult protective services to investigate, as appropriate, alleged abuse of any adult in need of protective services, as the term adult in need of protective services is defined in the Social Welfare Act.¹

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

House Bill 4197 is similar to Senate Bill 315 of the 2021-2022 Legislative Session. The bill was reported from the House Committee on Financial Services but received no further action.

¹ "Adult in need of protective services" means a vulnerable person at least 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.