

**SUBSTITUTE FOR
SENATE BILL NO. 315**

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:

1 TITLE

2 An act to enact the uniform securities act (2002) relating to
3 the issuance, offer, sale, or purchase of securities; to prohibit
4 fraudulent practices in relation to securities; to establish civil
5 and criminal sanctions for violations of the act and civil
6 sanctions for violation of the rules promulgated ~~pursuant to~~ **under**
7 the act; to require the registration of broker-dealers, agents,
8 investment advisers, and securities; to regulate Michigan

1 investment markets; to make uniform the law with reference to
 2 securities; to authorize certain actions to protect certain
 3 specified adults from financial exploitation; to prescribe the
 4 powers and duties of certain state governmental officers and
 5 agencies; and to repeal acts and parts of acts.

6 ARTICLE 5A

7 FINANCIAL EXPLOITATION OF SPECIFIED ADULTS

8 Sec. 531. As used in this article:

9 (a) "Account" means any account with a broker-dealer or
 10 investment adviser for which a specified adult has the authority to
 11 transact business.

12 (b) "Agency of competent jurisdiction" means an entity
 13 authorized to investigate or review suspicions of abuse or
 14 exploitation, including, but not limited to, adult protective
 15 services and law enforcement.

16 (c) "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 (d) "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 adviser 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 adviser 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 adviser 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 adviser first placed the temporary hold on the
11 disbursement of funds or securities, or other transaction, the
12 broker-dealer or investment adviser 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 adviser 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 adviser reasonably believes that the individual has
25 engaged, is engaged, or will engage in the financial exploitation
26 of the specified adult.

27 (iii) An agency of competent jurisdiction.

28 (c) The broker-dealer or investment adviser immediately
29 initiates an internal review of the facts and circumstances that

1 caused the broker-dealer or investment adviser to reasonably
2 believe that the financial exploitation of the specified adult has
3 occurred, is occurring, has been attempted, or will be attempted.

4 (2) If a broker-dealer or investment adviser reasonably
5 believes that financial exploitation of a specified adult may have
6 occurred, may have been attempted, or is being attempted, a broker-
7 dealer or investment adviser may provide notification of that
8 financial exploitation to any of the following:

9 (a) The administrator.

10 (b) An agency of competent jurisdiction.

11 (c) A reasonably associated individual, unless that individual
12 is unavailable or the broker-dealer or investment adviser
13 reasonably believes that the individual has engaged, is engaged, or
14 will engage in the financial exploitation of the specified adult.

15 (d) Any third party previously designated by the specified
16 adult to receive information about the account, unless that
17 individual is unavailable or the broker-dealer or investment
18 adviser reasonably believes that the individual has engaged, is
19 engaged, or will engage in the financial exploitation of the
20 specified adult.

21 (3) A temporary hold authorized under this section expires on
22 either of the following:

23 (a) The day a broker-dealer or investment adviser determines
24 that the disbursement or transaction will not result in financial
25 exploitation of the specified adult.

26 (b) Not later than 15 business days after the date that the
27 broker-dealer or investment adviser first placed the temporary hold
28 on the disbursement of funds or securities, or other transaction,
29 unless otherwise terminated or extended by the administrator,

1 another agency of competent jurisdiction, or a court of competent
2 jurisdiction, or unless extended under subsection (4).

3 (4) If the broker-dealer's or investment adviser's internal
4 review of the facts and circumstances under subsection (1)(c)
5 supports the broker-dealer's or investment adviser's reasonable
6 belief that the financial exploitation of the specified adult has
7 occurred, is occurring, has been attempted, or will be attempted, a
8 broker-dealer or investment adviser may extend a temporary hold
9 authorized under this section for not longer than 40 business days
10 following the date authorized under subsection (3)(b), unless
11 otherwise terminated or extended by the administrator, another
12 agency of competent jurisdiction, or a court of competent
13 jurisdiction.

14 (5) Subsections (3) and (4) do not require the administrator
15 to extend or terminate a temporary hold authorized under this
16 section.

17 Sec. 535. (1) A broker-dealer or investment adviser that takes
18 action under this article shall establish and maintain written
19 procedures reasonably designed to achieve compliance with this
20 article, including, but not limited to, procedures related to the
21 identification, escalation, and reporting of matters related to the
22 financial exploitation of specified adults.

23 (2) The procedures required under subsection (1) must identify
24 the title of each individual who is authorized to place, terminate,
25 or extend a temporary hold on behalf of the broker-dealer or
26 investment adviser under this article. Only an individual who
27 serves in a supervisory, compliance, legal, or senior or vulnerable
28 investor protection capacity for the broker-dealer or investment
29 adviser is eligible for identification as an authorized individual

1 under this subsection.

2 Sec. 537. (1) Subject to 15 USC 78o(i)(1) and 15 USC 80b-18a,
3 and subject to the record-keeping requirements provided in section
4 411, a broker-dealer or investment adviser shall retain records
5 related to compliance with this article and ensure that those
6 records are readily available to the department on request. The
7 retained records must include records of all of the following:

8 (a) Any requests for a disbursement or other transaction that
9 a broker-dealer or investment adviser reasonably believed to
10 constitute financial exploitation of a specified adult and the
11 resulting temporary hold.

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

16 (c) The name and title of any individual who authorized a
17 temporary hold on a disbursement or other transaction.

18 (d) Any notifications to relevant parties under section 533.

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

21 (2) A broker-dealer or investment adviser shall provide access
22 to or copies of the records retained under subsection (1) to
23 agencies of this state charged with administering state adult
24 protective services laws and to law enforcement, either as part of
25 a referral to the agency or to law enforcement, or upon request of
26 the agency or law enforcement pursuant to an investigation. The
27 records may include historical records as well as records relating
28 to the most recent transaction or transactions that may comprise
29 financial exploitation or suspected financial exploitation of a

1 specified adult. All records made available to agencies or law
2 enforcement under this subsection are not subject to the freedom of
3 information act, 1976 PA 442, MCL 15.231 to 15.246. This subsection
4 does not limit or otherwise impede the authority of the
5 administrator to access or examine the books and records of broker-
6 dealers and investment advisers as otherwise provided by law.

7 Sec. 539. Notwithstanding any provision of law to the
8 contrary, an agency of competent jurisdiction may disclose to any
9 reporting or notifying broker-dealer or investment adviser the
10 general status or final disposition of an investigation that arose
11 from a report made by the broker-dealer or investment adviser.

12 Sec. 541. (1) This article does not require a broker-dealer or
13 investment adviser to place temporary holds on disbursements of
14 funds or securities from the accounts of specified adults or other
15 transactions concerning those accounts.

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

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

26 Sec. 543. A broker-dealer or investment adviser that exercises
27 good faith in making disclosures, placing a temporary hold, or
28 providing access to records pursuant to this article is immune from
29 any administrative or civil liability that might otherwise arise

1 **from those activities.**

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.