

SENATE BILL NO. 338

BY SENATOR MARTINY

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AN ACT

To enact Part X-A of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:725 through 725.7, relative to trade and commerce; to provide certain protections for vulnerable adults from financial exploitation; to provide definitions, terms, conditions, requirements, and procedures; to provide with regard to governmental disclosures and immunity; to provide for third-party disclosures and immunity; to provide for delaying disbursements and immunity; to provide for receipt of notice; to provide with regard to record-keeping; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part X-A of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:725 through 725.7, is hereby enacted to read as follows:

PART X-A. LOUISIANA PROTECTION OF VULNERABLE

ADULTS FROM FINANCIAL EXPLOITATION LAW

§725. Short title

This Part shall be known and may be cited as the "Louisiana Protection of Vulnerable Adults from Financial Exploitation Law".

§725.1. Definitions

As used in this Part the following terms have the respective meanings, unless the context clearly indicates otherwise:

(1) "Adult protection agency" means:

(a) The Office of Elderly Affairs in the Office of the Governor, for any

1 individual sixty years of age or older in need of adult protective services.

2 (b) The Department of Health and Hospitals for any individual between
3 the ages of eighteen and fifty-nine in need of adult protective services.

4 (2) "Dealer" shall have the same meaning as provided in R.S. 51:702(5).

5 (3) "Eligible adult" means:

6 (a) A person sixty years of age or older.

7 (b) A person subject to the Adult Protective Services Act, R.S.
8 15:1501 et seq.

9 (4) "Financial exploitation" means:

10 (a) The wrongful or unauthorized taking, withholding, appropriation, or
11 use of money, assets, or property of an eligible adult.

12 (b) Any act or omission taken by a person, including through the use of
13 a power of attorney, act of procuracy, contract of mandate, or letters of
14 curatorship, guardianship, or conservatorship of an eligible adult, to do any of
15 the following:

16 (i) Obtain control, through deception, intimidation, or undue influence
17 over an eligible adult's assets or property to deprive the eligible adult of the
18 ownership, use, benefit, or possession of the eligible adult's money, assets, or
19 property.

20 (ii) Convert money, assets, or property of the eligible adult to deprive
21 such eligible adult of the ownership, use, benefit, or possession of the eligible
22 adult's money, assets, or property.

23 (5) "Investment advisor" shall have the same meaning as provided in
24 R.S. 51:702(7).

25 (6) "Investment advisor representative" shall have the same meaning as
26 provided in R.S. 51:702(7.1).

27 (7) "Qualified individual" means any salesman, investment advisor
28 representative, or person who serves in a supervisory, compliance, or other legal
29 capacity for a dealer or investment advisor.

30 (8) "Salesman" shall have the same meaning as set forth in R.S.

1 **51:702(14).**

2 **§725.2. Actions and immunities**

3 **A. Governmental disclosures and immunity.**

4 **(1) If a qualified individual reasonably believes that financial**
5 **exploitation of an eligible adult may have occurred, may have been attempted,**
6 **or is being attempted, the qualified individual may notify the appropriate adult**
7 **protection agency and the commissioner of securities.**

8 **(2) A qualified individual who, in good faith and exercising reasonable**
9 **care, makes a disclosure of information pursuant to this Section shall be**
10 **immune from administrative or civil liability that might otherwise arise from**
11 **such disclosure or for any failure to notify the customer of the disclosure.**

12 **§725.3. Third-party disclosures and immunity**

13 **A. If a qualified individual reasonably believes that financial exploitation**
14 **of an eligible adult may have occurred, may have been attempted, or is being**
15 **attempted, a qualified individual may notify any third party previously**
16 **designated in writing by the eligible adult or any other person permitted under**
17 **existing law, rules, regulations, or customer agreement.**

18 **B. Disclosure shall not be made to any designated third party who is**
19 **suspected of financial exploitation or other abuse of the eligible adult.**

20 **C. A qualified individual who, in good faith and exercising reasonable**
21 **care, complies with this Section shall be immune from any administrative or**
22 **civil liability that might arise from such disclosure.**

23 **§725.4. Delaying disbursements and immunity**

24 **A. A dealer or investment advisor may delay disbursement from an**
25 **account of an eligible adult or an account on which an eligible adult is a**
26 **beneficiary, if all of the following conditions are met:**

27 **(1) The dealer, investment advisor, or qualified individual reasonably**
28 **believes, after initiating an internal review of the requested disbursement and**
29 **the suspected financial exploitation, that the requested disbursement may result**
30 **in financial exploitation of an eligible adult.**

1 (2) The dealer or investment advisor meets at least one of the following
2 criteria:

3 (a) Immediately, but in no event more than two business days after the
4 requested disbursement, provide written notification of the delay and the reason
5 for the delay to all parties authorized to transact business on the account, unless
6 any such party is reasonably believed to have engaged in suspected or attempted
7 financial exploitation of the eligible adult.

8 (b) Immediately, but in no event more than two business days after the
9 requested disbursement, notify the adult protection agency and the
10 commissioner of securities.

11 (c) Continue internal review of the suspected or attempted financial
12 exploitation of the eligible adult, as necessary, and report the investigation
13 results to the adult protection agency and the commissioner of securities within
14 seven business days after the requested disbursement.

15 B. Unless a court or the commissioner enters an order extending the
16 refusal of disbursement or providing any other applicable protective relief, any
17 delay of a disbursement as authorized by this Section will expire upon the
18 sooner of the following:

19 (1) A determination by the dealer or investment advisor that the
20 disbursement will not result in financial exploitation of the eligible adult.

21 (2) Fifteen business days after the date on which the dealer or investment
22 advisor first delayed disbursement of the funds, unless either an adult
23 protection agency or the commissioner of securities requests that the dealer or
24 investment advisor extend the delay to no more than twenty-five business days
25 after the date on which the dealer or investment advisor first delayed
26 disbursement of the funds, unless sooner termination by the dealer or
27 investment advisor or an order by a court of competent jurisdiction.

28 C. A court of competent jurisdiction may enter an order extending the
29 delay of the disbursement of funds or may order other protective measures
30 based on the petition of the commissioner of securities, adult protective services,

1 the dealer, or other interested party.

2 D. A dealer, investment advisor, or qualified individual who, in good
3 faith and exercising reasonable care, complies with this Section shall be immune
4 from any administrative or civil liability that might otherwise arise from such
5 delay in a disbursement.

6 §725.5. Receipt of notice and immunity

7 No claim may be brought against the adult protection agency,
8 commissioner of securities, office of financial institutions, or the state of
9 Louisiana in connection with receipt or response to any notice of financial
10 exploitation.

11 §725.6. Records

12 A. A dealer or investment advisor shall provide access to or copies of
13 records that are relevant to the suspected or attempted financial exploitation of
14 an eligible adult to an adult protection agency, commissioner of securities, and
15 to law enforcement, either as part of a referral to the agency or to law
16 enforcement, or upon request of the agency or law enforcement pursuant to an
17 investigation.

18 B. The records may include historical records as well as records relating
19 to the most recent transaction or transactions that may comprise financial
20 exploitation of an eligible adult.

21 C. All records made available under this Section shall be kept strictly
22 confidential under applicable statutory authority of the commissioner of
23 securities or adult protection agency.

24 D. Nothing in this Section shall limit or otherwise impede the authority
25 of the commissioner of securities to access or examine the books and records of
26 dealers and investment advisors as otherwise provided by law.

27 §725.7. Rulemaking

28 The commissioner of securities shall have the power to make such rules
29 and regulations in accordance with the Administrative Procedure Act as he may
30 deem necessary to carry out the provisions of this Title, including the use of a

1 senior-specific certification or designation.

2 Section 2. The provisions of this Act shall become effective on January 1, 2017.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____