



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0385/1
ARG:ahe

2019 SENATE BILL 428

September 17, 2019 - Introduced by Senators TESTIN, CARPENTER, BERNIER, COWLES, OLSEN, PETROWSKI and WIRCH, cosponsored by Representatives MACCO, WITTKE, BOWEN, BRANDTJEN, DITTRICH, EDMING, GUNDRUM, HORLACHER, JAMES, KATSMA, KNODL, KRUG, KULP, MAGNAFICI, MURSAU, NOVAK, PETERSEN, PETRYK, PLUMER, QUINN, RAMTHUN, ROHRKASTE, SCHRAA, STEFFEN, SUMMERFIELD, THIESFELDT, TITTL, TRANEL and SKOWRONSKI. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT to amend** 551.508 (1m) (a) and (c), 551.603 (4) (a) and (c) and 551.604
2 (4); and **to create** 551.102 (33) and 551.413 of the statutes; **relating to:**
3 financial exploitation of vulnerable adults with securities accounts, violations
4 of the Wisconsin Uniform Securities Law, granting rule-making authority, and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill allows securities industry professionals to provide to the Department of Financial Institutions, adult protective service agencies, and other persons notice of suspected financial exploitation of certain vulnerable adults and allows broker-dealers and investment advisers to temporarily delay transactions or disbursements from the accounts of vulnerable adults when financial exploitation of a vulnerable adult is suspected. The bill also increases penalties for securities violations committed against these vulnerable adults.

Under current law, upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of any person age 60 or older who has experienced, is experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (an elder adult at risk), the elder-adult-at-risk agency in a county must respond by investigating or must refer the report to another agency for investigation. Similarly, if the adult-at-risk agency in a county has reason to believe that an adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is

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experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (an adult at risk) is the subject of abuse, financial exploitation, neglect, or self-neglect, the adult-at-risk agency may respond by investigating to determine whether the adult at risk is in need of protective services. “Financial exploitation” includes obtaining an individual’s money or property by deceiving or enticing the individual or by coercing the individual to give, sell at less than fair value, or convey money or property against his or her will without his or her informed consent, and also includes certain crimes such as theft and forgery.

Current law also requires, with exceptions, certain securities industry professionals to be registered with the Division of Securities in DFI, including an individual who represents a broker-dealer in securities transactions (securities agent) and an investment adviser representative.

This bill allows a securities agent, investment adviser representative, or other individual serving in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser (qualified individual) who reasonably suspects that financial exploitation of an adult at risk or an individual who is 60 years of age or older (together, vulnerable adult) has occurred or is being attempted to notify the division, an adult-at-risk agency or elder-adult-at-risk agency (together, APS agency), a law enforcement agency, or any combination of these, as well as certain other persons, including a legal guardian, a person identified on a contact list provided by the vulnerable adult, and a spouse, parent, adult child, or other individual reasonably associated with the vulnerable adult. The bill also allows a broker-dealer or investment adviser to delay a transaction on, or disbursement from, an account of a vulnerable adult or an account on which a vulnerable adult is a beneficiary if all of the following apply: 1) the broker-dealer, investment adviser, or qualified individual reasonably suspects that the requested transaction or disbursement may result in financial exploitation of a vulnerable adult; and 2) the broker-dealer or investment adviser promptly notifies the division, an APS agency, or a law enforcement agency and provides written notice of the delay and the reason for the delay to all parties authorized to transact business on the account. The division may, by rule, establish additional guidelines for the delay of a transaction or disbursement. Any delay of a transaction or disbursement expires on the earlier of the following: a determination by the broker-dealer or investment adviser that the transaction or disbursement is not reasonably likely to result in financial exploitation of the vulnerable adult; or, subject to exceptions, 15 business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds. The bill provides for immunity from liability for a broker-dealer, investment adviser, or qualified individual that, in good faith and exercising reasonable care, acts in accordance with these provisions.

Current law includes numerous provisions prohibiting specified conduct in connection with securities transactions or the offering or sale of securities. Under current law, a person who violates the state’s securities laws may be subject to criminal liability or civil liability or both. A person who willfully violates the state’s securities laws, with certain exceptions, is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both.

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A person may also be subject to a civil enforcement proceeding for violating the state's securities laws. In a civil enforcement proceeding, the court in a circuit court proceeding or the division in an administrative proceeding may impose a civil penalty of not more than \$5,000 for a single violation or not more than \$250,000 for more than one violation. Current law also includes a penalty enhancer for securities law violations committed against a person who is at least 65 years of age. For criminal offenses, the maximum fine may be increased by not more than \$5,000 and the maximum term of imprisonment may be increased by not more than five years, and for civil offenses the civil penalty may be increased by not more than \$5,000 for a single violation or not more than \$250,000 for more than one violation.

Under this bill, this penalty enhancer applies to violations committed against a vulnerable adult.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 551.102 (33) of the statutes is created to read:
- 2 551.102 (33) "Vulnerable adult" means an adult at risk, as defined in s. 55.01
- 3 (1e), or an individual who is at least 60 years of age.
- 4 **SECTION 2.** 551.413 of the statutes is created to read:
- 5 **551.413 Financial exploitation of vulnerable adults. (1) DEFINITIONS.** In
- 6 this section:
- 7 (a) "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).
- 8 (b) "Elder-adult-at-risk agency" has the meaning given in s. 46.90 (1) (bt).
- 9 (c) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).
- 10 (d) "Law enforcement agency" has the meaning given in s. 165.77 (1) (b).
- 11 (e) "Qualified individual" means any agent representing a broker-dealer, any
- 12 investment adviser representative, or any individual who serves in a supervisory,
- 13 compliance, or legal capacity for a broker-dealer or investment adviser.

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1 **(2) NOTICE OF SUSPECTED FINANCIAL EXPLOITATION.** (a) If a qualified individual
2 reasonably suspects that financial exploitation of a vulnerable adult may have
3 occurred, may have been attempted, or is being attempted, the qualified individual,
4 in cooperation with the qualified individual's broker-dealer or investment adviser,
5 may notify the division, an adult-at-risk agency, an elder-adult-at-risk agency, or
6 a law enforcement agency, or any combination of these.

7 (b) After notifying the division or agency under par. (a), a qualified individual
8 may, to the extent permitted under federal law, notify any of the following concerning
9 the qualified individual's suspicion that financial exploitation may have occurred,
10 may have been attempted, or is being attempted:

- 11 1. Any person identified in a list provided by the vulnerable adult under sub.
12 (4).
- 13 2. The vulnerable adult's spouse, parent, or adult child, or any other individual
14 reasonably associated with the vulnerable adult.
- 15 3. Any legal guardian of the vulnerable adult.
- 16 4. Any trustee, cotrustee, or successor trustee of the account of the vulnerable
17 adult.
- 18 5. Any agent under a power of attorney of the vulnerable adult.
- 19 6. Any other person permitted under applicable law or rule of the division.

20 **(3) DELAY OF TRANSACTION OR DISBURSEMENT.** (a) A broker-dealer or investment
21 adviser may delay a transaction on, or disbursement from, an account of a vulnerable
22 adult or an account on which a vulnerable adult is a beneficiary if all of the following
23 apply:

- 24 1. The broker-dealer, investment adviser, or qualified individual reasonably
25 suspects, after initiating an internal review of the requested transaction or

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1 disbursement and the suspected financial exploitation, that the requested
2 transaction or disbursement may result in financial exploitation of a vulnerable
3 adult.

4 2. The broker-dealer or investment adviser does all of the following:

5 a. As soon as possible, but not more than 2 business days after it first delays
6 the requested transaction or disbursement, provides written notification of the delay
7 and the reason for the delay to all parties authorized to transact business on the
8 account, except to any party reasonably suspected to have engaged in or attempted
9 financial exploitation of the vulnerable adult.

10 b. As soon as possible, but not more than 2 business days after it first delays
11 the requested transaction or disbursement, notifies the division, an adult-at-risk
12 agency, an elder-adult-at-risk agency, or a law enforcement agency, or any
13 combination of these.

14 (b) The division may, by rule, establish additional guidelines for the delay of
15 a transaction or disbursement under par. (a).

16 (c) Upon request by the division or agency to which a broker-dealer or
17 investment adviser provided notice under par. (a) 2. b., the broker-dealer or
18 investment adviser shall provide to the division or agency the results of any
19 continued internal review of the suspected financial exploitation conducted after the
20 notice under par. (a) 2. b. was provided.

21 (d) Any delay of a transaction or disbursement under this subsection expires
22 on the earlier of the following:

23 1. A determination by the broker-dealer or investment adviser that the
24 transaction or disbursement is not reasonably likely to result in financial
25 exploitation of the vulnerable adult.

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1 2. Fifteen business days after the date on which the broker-dealer or
2 investment adviser first delayed the transaction or disbursement of the funds, unless
3 the division or agency to which notice was provided under par. (a) 2. b. requests that
4 the broker-dealer or investment adviser extends the delay, in which case the delay
5 shall expire no more than 25 business days after the date on which the broker-dealer
6 or investment adviser first delayed the transaction or disbursement of the funds
7 unless it is otherwise terminated or extended by the division or court order.

8 (e) A court may enter an order extending the delay of the transaction or
9 disbursement of funds or an order granting other protective relief based on the
10 petition of the division, an agency to which notice was provided under par. (a) 2. b.,
11 the broker-dealer or investment adviser that initiated the delay under this
12 subsection, or any other interested party.

13 **(4) LIST OF AUTHORIZED CONTACTS.** A broker-dealer or investment adviser may
14 offer to a vulnerable adult the opportunity to submit and periodically update a list
15 of persons that the vulnerable adult authorizes to be contacted if a qualified
16 individual reasonably suspects that financial exploitation of the vulnerable adult
17 may have occurred, may have been attempted, or is being attempted.

18 **(5) IMMUNITY FROM LIABILITY.** A broker-dealer, investment adviser, or qualified
19 individual that, in good faith and exercising reasonable care, complies with subs. (2)
20 and (3) is immune from liability for such conduct.

21 **(6) LAW ENFORCEMENT ACCESS TO RECORDS; STATUS REPORTS OF INVESTIGATION.** (a)
22 If a broker-dealer or investment adviser has reasonable cause to suspect that
23 financial exploitation of a vulnerable adult may have occurred, may have been
24 attempted, or is being attempted, any investigating law enforcement agency has the
25 same privilege to obtain, from the broker-dealer or investment adviser, financial

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1 records and other information related to the suspected financial exploitation that an
2 elder-adult-at-risk agency has under s. 46.90 (5) (b) 6.

3 (b) After a broker-dealer or investment adviser has provided notice to the
4 division or an agency under sub. (3) (a) 2. b., the division or agency receiving the
5 notice may, notwithstanding any other provision of law, disclose to the broker-dealer
6 or investment adviser information relating to the status or results of any
7 investigation arising from the notice.

8 **SECTION 3.** 551.508 (1m) (a) and (c) of the statutes are amended to read:

9 551.508 (1m) (a) If a person is convicted of a crime under sub. (1) and the crime
10 is committed against another person who is at least 65 years of age a vulnerable adult
11 when the crime is committed, for each such offense the maximum fine prescribed
12 under sub. (1) may be increased by not more than \$5,000 and the maximum term of
13 imprisonment prescribed under sub. (1) may be increased by not more than 5 years.

14 (c) It is no defense to the enhancement of penalties under this subsection that
15 the person convicted did not know ~~the age of~~ that the victim was a vulnerable adult
16 or reasonably believed that the victim was not ~~at least 65 years of age~~ a vulnerable
17 adult.

18 **SECTION 4.** 551.603 (4) (a) and (c) of the statutes are amended to read:

19 551.603 (4) (a) In any action under this section, if the court imposes a civil
20 penalty under sub. (2) (b) 3. for any violation against another person who is at least
21 65 years of age a vulnerable adult when the violation occurs, for each such violation
22 the civil penalty prescribed under sub. (2) (b) 3. for a single violation may be
23 increased by not more than \$5,000 and the maximum civil penalty for more than one
24 violation may be increased by not more than \$250,000.

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1 (c) It is no defense to the enhancement of civil penalties under this subsection
2 that the defendant did not know ~~the age of~~ that the victim was a vulnerable adult or
3 reasonably believed that the victim was not ~~at least 65 years of age~~ a vulnerable
4 adult.

5 **SECTION 5.** 551.604 (4) of the statutes is amended to read:

6 551.604 (4) CIVIL PENALTY. In a final order under sub. (3), the administrator
7 may impose a civil penalty in the form of an administrative assessment up to \$5,000
8 for a single violation or up to \$250,000 for more than one violation except that, if the
9 violation is committed against another person who is ~~at least 65 years of age~~ a
10 vulnerable adult when the violation occurs, for each such violation the civil penalty
11 may be up to \$10,000 for a single violation or up to \$500,000 for more than one
12 violation. It is no defense to the enhancement of civil penalties under this subsection
13 that the defendant did not know ~~the age of~~ that the victim was a vulnerable adult or
14 reasonably believed that the victim was not ~~at least 65 years of age~~ a vulnerable
15 adult.

16 **SECTION 6. Initial applicability.**

17 (1) PENALTY ENHANCEMENT. The treatment of ss. 551.508 (1m) (a) and (c),
18 551.603 (4) (a) and (c), and 551.604 (4) first applies to violations committed on the
19 effective date of this subsection.

20 (END)