

Senate Bill 84

By: Senators Hufstetler of the 52nd, Esteves of the 6th, Kirkpatrick of the 32nd, Williams of the 25th, Watson of the 1st and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia
2 Uniform Securities Act of 2008," so as to provide for financial protections for elder and
3 disabled adults who may be victims of financial exploitation; to provide for reporting and
4 notice requirements; to provide for the delay of disbursements or transactions that may result
5 in such financial exploitation; to provide for civil and administrative liability protections; to
6 provide for certain disclosures and access to records; to provide for limitations; to provide
7 for definitions; to provide for related matters; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia Uniform
12 Securities Act of 2008," is amended by adding a new article to read as follows:

13 "ARTICLE 8

14 10-5-100.

15 As used in this article, the term:

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- 16 (1) 'Account' means any account with a broker-dealer or investment adviser for which
17 a client has the authority to transact business.
- 18 (2) 'Adult protective agency' means any office, division, department, or unit in this state
19 that is charged with the investigation of abuse, neglect, or exploitation of an elder person
20 or disabled adult.
- 21 (3) 'Eligible adult' means:
- 22 (A) A person 65 years of age or older; or
- 23 (B) A person 18 years of age or older who is mentally or physically incapacitated, has
24 Alzheimer's disease, or has dementia.
- 25 (4) 'Financial exploitation' means:
- 26 (A) The wrongful or unauthorized taking, withholding, appropriation, or use of the
27 money, assets, or property of an eligible adult; or
- 28 (B) Any act or omission taken by a person, including, but not limited to, through the
29 use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:
- 30 (i) Obtain the control, use, or benefit of the eligible adult's money, assets, or property
31 to deprive the eligible adult of the ownership, use, benefit, or possession of his or her
32 money, assets, or property through deception, intimidation, or undue influence or by
33 the use of any scheme, device, or artifice to defraud; or
- 34 (ii) Convert the money, assets, or property of the eligible adult to deprive the eligible
35 adult of the ownership, use, benefit, or possession of his or her money, assets, or
36 property.
- 37 (5) 'Qualified individual' means any agent, investment adviser representative, or person
38 who serves in a supervisory, compliance, or legal capacity for a broker-dealer or
39 investment advisor.

40 10-5-101.

41 (a) If a qualified individual has reasonable cause to believe that the financial exploitation
42 of an eligible adult may have occurred, may have been attempted, or is being attempted,
43 then the qualified individual shall promptly notify the Commissioner.

44 (b) The notification required by subsection (a) of this Code section may be made by oral
45 or written communication or by form as issued by the Commissioner. Such notice shall
46 include, to the extent possible:

47 (1) The name and address of the eligible adult;

48 (2) The name and address of the eligible adult's caretaker;

49 (3) The age of the eligible adult;

50 (4) The nature and extent of the eligible adult's potential or actual injury or condition
51 resulting from the financial exploitation;

52 (5) Any other pertinent information; and

53 (6) Any additional information that is required by a rule adopted or form or order issued
54 by the Commission.

55 10-5-102.

56 If a qualified individual has reasonable cause to believe that the financial exploitation of
57 an eligible adult may have occurred, may have been attempted, or is being attempted, then
58 a qualified individual may notify any third party previously designated by the eligible
59 adult; provided, however, that a qualified individual shall not notify any designated third
60 party that is suspected of the financial exploitation or other abuse of the eligible adult.

61 10-5-103.

62 (a) A broker-dealer or investment adviser may delay a disbursement from, or a transaction
63 in connection with, an account of an eligible adult or an account on which an eligible adult
64 is a beneficiary if the broker-dealer, investment adviser, or qualified individual has

65 reasonable cause to believe that, after initiating an internal review of the requested
66 disbursement or transaction and the suspected financial exploitation, the requested
67 disbursement or transaction may result in the financial exploitation of the eligible adult.

68 (b) If a broker-dealer or investment adviser delays a disbursement or transaction under
69 subsection (a) of this Code section, the broker-dealer, investment adviser, or a qualified
70 individual shall:

71 (1) Immediately, and in no event more than two business days after the requested
72 disbursement or transaction was delayed, provide written notification of the delay and the
73 reason for the delay to all parties authorized to transact business on the account, unless
74 there is reasonable cause to believe such party engaged in the suspected or attempted
75 financial exploitation of the eligible adult;

76 (2) Immediately, and in no event more than two business days after the requested
77 disbursement or transaction was delayed, notify the Commissioner pursuant to Code
78 Section 10-5-101; and

79 (3) Continue an internal review of the suspected or attempted financial exploitation of
80 the eligible adult, as necessary, and report the investigation's results to the Commissioner
81 within seven business days of the requested disbursement or transaction.

82 (c) The authorization of any delay of a disbursement or transaction pursuant to this Code
83 section shall expire upon the sooner of:

84 (1) A determination by the broker-dealer or investment adviser that the disbursement or
85 transaction will not result in the financial exploitation of the eligible adult; or

86 (2) Fifteen business days after the date on which the broker-dealer or investment adviser
87 first delayed the requested disbursement or transaction, unless the Commissioner requests
88 that the broker-dealer or investment adviser extend the delay, in which case the delay
89 shall expire no more than 25 business days after the date on which the broker-dealer or
90 investment adviser first delayed the disbursement or transaction, unless sooner terminated
91 by either the Commissioner or an order of a court of competent jurisdiction.

92 (d) A court of competent jurisdiction may enter an order extending the delay of a
93 disbursement or transaction under this Code section, or may order other protective relief,
94 upon the petition of the Commissioner; adult protective agency of competent jurisdiction;
95 a broker-dealer or investment adviser that initiated the delay under this Code section; or
96 another interested party.

97 10-5-104.

98 No broker-dealer, investment adviser, or qualified individual who, in good faith and
99 exercising reasonable care, complies with this article shall be subject to administrative or
100 civil liability based on:

101 (1) A delay of a disbursement or transaction pursuant to this article;

102 (2) A disclosure made pursuant to this article; or

103 (3) The failure to notify an eligible adult of disclosures made pursuant to this article.

104 10-5-105.

105 Notwithstanding any provision of law to the contrary, the Commissioner may disclose to
106 any notifying broker-dealer, investment adviser, or qualified individual the general status
107 or final disposition of any investigation that arose from a report made by the broker-dealer,
108 investment adviser, or qualified individual under this article.

109 10-5-106.

110 (a) A broker-dealer or investment adviser shall provide access to or copies of records that
111 are relevant to the suspected or attempted financial exploitation of an eligible adult to the
112 Commissioner, adult protective agency of competent jurisdiction, or law enforcement
113 pursuant to an investigation. Such records may include historical records and records
114 pertaining to a disbursement or transaction related to the suspected or attempted financial

115 exploitation of an eligible adult. Records made available under this Code section shall not
116 be public records and shall not be available for public examination.

117 (b) Nothing in this Code section shall limit or otherwise impede the authority of the
118 Commissioner from accessing or examining the books and records of a broker-dealer or
119 investment adviser as otherwise provided by law.

120 10-5-107.

121 Nothing in this article shall limit or shield, in any manner, a broker-dealer, investment
122 adviser, or qualified individual from any administrative or civil liability for any claim, or
123 for reasonable attorneys' fees, costs, and litigation expenses related to such claim, for
124 participating in or materially aiding the financial exploitation of an eligible adult. Any
125 such civil claim may be asserted by the eligible adult, or on his or her behalf by an
126 appropriate guardian or representative who is not involved in or otherwise suspected of
127 participating in the financial exploitation of the eligible adult, by filing a civil action in a
128 court of competent jurisdiction.

129 10-5-108.

130 Nothing in this article shall limit a broker-dealer or investment adviser from being absolved
131 of any applicable reporting duties under Code Section 30-5-4 and other laws of this state."

132 **SECTION 2.**

133 All laws and parts of laws in conflict with this Act are repealed.