

# NASAA MODEL LEGISLATION OR REGULATION TO PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

*Adopted January 22, 2016*

## Prefatory note:

Jurisdictions considering this model legislation or regulation, whether through legislative sessions or rulemaking, may need to consider certain small changes to terms, particularly with regard to certain designated terms. For example, this model refers to the “commissioner of securities” or “state securities commissioner” but in certain jurisdictions, that position may be held by a director of securities, or commissioner of banking and securities, or commissioner of corporations. Furthermore, this model refers to Adult Protective Services, but certain jurisdictions may require a more specific reference to the agency by exact name. Finally, with regard to Section 2 (Definitions), certain jurisdictions may use different defined terms (e.g. salesmen instead of broker-dealer agents); therefore, Section 2 may require certain slight changes to the definitions to align with existing securities statutes.

## *An Act to Protect Vulnerable Adults from Financial Exploitation.*

**Section 1. Short title.** Sections\_\_\_ to \_\_\_ may be cited as “An Act to Protect Vulnerable Adults from Financial Exploitation” and in this chapter as this act.

**Section 2. Definitions.** In this act, unless the context otherwise requires:

- (1) **“Agent”** shall have the same meaning as in [insert state code section].
- (2) **“Broker-dealer”** shall have the same meaning as in [insert state code section].
- (3) **“Eligible adult”** means:
  - (a) a person sixty-five years of age or older; or
  - (b) a person subject to [insert state Adult Protective Services statute]
- (4) **“Financial exploitation”** means:
  - (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or
  - (b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:
    - i. Obtain control, through deception, intimidation or undue influence, over the eligible adult’s money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or

- ii. Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.
- (5) **“Investment Adviser”** shall have the same meaning as in [insert state code section].
- (6) **“Investment Adviser Representative”** shall have the same meaning as in [insert state code section].
- (7) **“Qualified individual”** means any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

**Section 3. Governmental Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify Adult Protective Services and the commissioner of securities (collectively “the Agencies”).

**Section 4. Immunity for Governmental Disclosures.** A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to section 3 shall be immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

**Section 5. Third-Party Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

**Section 6. Immunity for Third-Party Disclosures.** A qualified individual that, in good faith and exercising reasonable care, complies with section 5 shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

**Section 7. Delaying Disbursements.** (1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

- (a) the broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult; and
- (b) the broker-dealer or investment adviser:

- i. Immediately, but in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;
- ii. Immediately, but in no event more than two business days after the requested disbursement, notifies the Agencies; and
- iii. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the Agencies within seven business days after the requested disbursement.

(2) Any delay of a disbursement as authorized by this section will expire upon the sooner of:

- (a) a determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or
- (b) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless either of the Agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner of securities, Adult Protective Services, the broker-dealer or investment adviser that initiated the delay under this Section 7, or other interested party.

**Section 8. Immunity for Delaying Disbursements.** A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with section 7 shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement in accordance with this section.

**Section 9. Records.** A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be considered a public record as defined in [State public records law]. Nothing in this provision shall limit or otherwise impede the authority of the state securities commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.