

2016 Regular Session

SENATE BILL NO. 338

BY SENATOR MARTINY

SECURITIES. Provides for the protection of vulnerable adults from financial exploitation.
(1/1/17)

1 AN ACT
2 To enact R.S. 51:725 through 725.7, relative to trade and commerce; to provide certain
3 protections for vulnerable adults from financial exploitation; to provide definitions,
4 terms, conditions, requirements and procedures; to provide with regard to
5 governmental disclosures and immunity; to provide for third party disclosures and
6 immunity; to provide for delaying disbursements and immunity; to provide for
7 receipt of notice; to provide with regard to record-keeping; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 51:725 through 725.7 are hereby enacted to read as follows:

11 **§725. Short title**

12 **This Section and Sections 725.1 through 725.7 shall be known and may**
13 **be cited as the "Louisiana Protection of Vulnerable Adults from Financial**
14 **Exploitation Law".**

15 **§725.1. Definitions**

16 **As used in this Section the following terms shall have the respective**
17 **meanings, unless the context clearly indicates otherwise:**

1 **(1) "Adult protection agency" means:**

2 **(a) The Office of Elderly Affairs in the Office of the Governor, for any**
3 **individual sixty years of age or older in need of adult protective services.**

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

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

7 **(3) "Eligible adult" means:**

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

9 **(b) A person subject to the Adult Protective Services Act, R.S.**
10 **15:1503(3).**

11 **(4) "Financial exploitation" means:**

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

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

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

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

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

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

29 **(7) "Qualified individual" means any salesman, investment adviser**

1 representative or person who serves in a supervisory, compliance or other legal
2 capacity for a dealer or investment advisor.

3 (8) "Salesman" shall have the same meaning as set forth in R.S.
4 51:702(14).

5 §725.2. Actions and immunities

6 A. Governmental disclosures and immunity.

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

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

15 §725.3. Third party disclosures and immunity

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

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

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

26 §725.4. Delaying disbursements and immunity

27 A. A dealer or investment advisor may delay disbursement from an
28 account of an eligible adult or an account on which an eligible adult is a
29 beneficiary, if all of the following conditions are met.

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

5 **(2) The dealer or investment advisor shall meet at least one of the**
6 **following criteria:**

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

12 **(b) Immediately, but in no event more than two business days after the**
13 **requested disbursement, notify the adult protection agency and the**
14 **commissioner of securities.**

15 **(c) Continue internal review of the suspected or attempted financial**
16 **exploitation of the eligible adult, as necessary, and report the investigation**
17 **results to the adult protection agency and the commissioner of securities within**
18 **seven business days after the requested disbursement.**

19 **B. Unless a court or the commissioner enters an order extending the**
20 **refusal of disbursement or providing any other applicable protective relief, any**
21 **delay of a disbursement as authorized by this Section will expire upon the**
22 **sooner of the following:**

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

25 **(2) Fifteen business days after the date on which the dealer or investment**
26 **advisor first delayed disbursement of the funds, unless either an adult**
27 **protection agency or the commissioner of securities requests that the dealer or**
28 **investment advisor extend the delay to no more than twenty-five business days**
29 **after the date on which the dealer or investment advisor first delayed**

1 disbursement of the funds, unless sooner termination by the dealer, investment
2 advisor or an order by a court of competent jurisdiction.

3 C. A court of competent jurisdiction may enter an order extending the
4 delay of the disbursement of funds or may order other protective measures
5 based on the petition of the commissioner of securities, adult protective services,
6 the dealer or other interested party.

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

11 §725.5. Receipt of notice and immunity

12 No claim may be brought against the adult protection agency,
13 commissioner of securities, office of financial institutions or the state of
14 Louisiana in connection with receipt or response to any notice of financial
15 exploitation.

16 §725.6. Records

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

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

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

29 D. Nothing in this Section shall limit or otherwise impede the authority

1 of the commissioner of securities to access or examine the books and records of
 2 dealers and investment advisors as otherwise provided by law.

3 §725.7. Rulemaking

4 The commissioner of securities shall have the power to make such rules
 5 and regulations in accordance with the Administrative Procedure Act as he may
 6 deem necessary to carry out the provisions of this Title, including the use of a
 7 senior specific certification or designation.

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

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

SB 338 Engrossed

2016 Regular Session

Martiny

Proposed law enacts the "Louisiana Protection of Vulnerable Adults from Financial Exploitation Law".

Proposed law provides for protection for vulnerable adults from financial exploitation. Sets forth procedures for taking of protective measures, including delay of disbursement of funds, if financial exploitation of an eligible adult is reasonably believed.

Proposed law provides immunity for certain governmental disclosures made in accordance with this Act.

Proposed law provides for immunity for certain disclosures for third parties.

Proposed law provides for delaying disbursements in certain instances and for immunity with regard to those delays.

Proposed law provides for receipt of notice with regard to the keeping of certain records.

Effective Jan. 1, 2017.

(Adds R.S. 51:725-725.7)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Added definitions of dealer, investment advisor, investment advisor representative, and salesman.
2. Added authorization to adopt rules in accordance with APA.
3. Added effective date of Jan. 1, 2017.