SLS 16RS-389 **ORIGINAL**

2016 Regular Session

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SENATE BILL NO. 338

BY SENATOR MARTINY

SECURITIES. Provides for the protection of vulnerable adults from financial exploitation. (gov sig)

AN ACT

2	To enact R.S. 51:725 through 725.6, 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 725.6 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 Financia
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) "Eligible adult" means:
7	(a) A person sixty years of age or older.
8	(b) A person subject to the Adult Protective Services Act, R.S.
9	<u>15:1503(3).</u>
10	(3) "Financial exploitation" means:
11	(a) The wrongful or unauthorized taking, withholding, appropriation or
12	use of money, assets or property of an eligible adult.
13	(b) Any act or omission taken by a person, including through the use of
14	a power of attorney, guardianship, or conservatorship of an eligible adult, to do
15	any of 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	(4) "Qualified individual" means any sales, investment adviser
24	representative or person who serves in a supervisory, compliance or other legal
25	capacity for a dealer or investment advisor.
26	§725.2. Actions and immunities
27	A. Governmental disclosures and immunity.
28	(1) If a qualified individual reasonably believes that financial
29	exploitation of an eligible adult may have occurred may have been attempted

1	or is being attempted, the qualified individual may notify the appropriate adult
2	protective services entities and the commissioner of securities.
3	(2) A qualified individual that, in good faith and exercising reasonable
4	care, makes a disclosure of information pursuant to this Section shall be
5	immune from administrative or civil liability that might otherwise arise from
6	such disclosure or for any failure to notify the customer of the disclosure.
7	§725.3. Third party disclosures and immunity
8	A. If a qualified individual reasonably believes that financial exploitation
9	of an eligible adult may have occurred, may have been attempted or is being
10	attempted, a qualified individual may notify any third party previously
11	designated by the eligible adult.
12	B. Disclosure shall not be made to any designated third party who is
13	suspected of financial exploitation or other abuse of the eligible adult.
14	C. A qualified individual who in good faith and exercising reasonable
15	care, complies with this Section shall be immune from any administrative or
16	civil liability that might arise from such disclosure.
17	§725.4. Delaying disbursements and immunity
18	A. A dealer or investment advisor may delay disbursement from an
19	account of an eligible adult or an account on which an eligible adult is a
20	beneficiary, if all of the following conditions are met.
21	(1) The dealer, investment advisor or qualified individual reasonably
22	believes, after initiating an internal review of the requested disbursement, and
23	the suspected financial exploitation, that the requested disbursement will result
24	in financial exploitation of an eligible adult.
25	(2) The dealer or investment advisor shall meet at least one of the
26	following criteria:
27	(a) Immediately, but in no event more than two business days after the
28	requested disbursement, provide written notification of the delay and the reason
29	for the delay to all parties authorized to transact business on the account, unless

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2	financial exploitation of the eligible adult.
3	(b) Immediately, but in no event more than two business days after the
4	requested disbursement, notify the adult protective services and the
5	commissioner or securities.
6	(c) Continue internal review of the suspected or attempted financial
7	exploitation of the eligible adult, as necessary, and report the investigation
8	results to the adult protective services and the commissioner of securities within
9	seven business days after the requested disbursement.
10	B. Any delay of a disbursement as authorized by this Section will expire
11	upon the sooner of the following:
12	(1) A determination by the dealer or investment advisor that the
13	disbursement will not result in financial exploitation of the eligible adult.
14	(2) Fifteen business days after the date on which the dealer or investment
15	advisor first delayed disbursement of the funds, unless either adult protective
16	services or the commissioner of securities request that the broker or investment
17	advisor extend the delay to no more than twenty-five business days after the
18	date on which the broker or investment advisor first delayed disbursement of
19	the funds, unless sooner termination by the broker, investment advisor or an
20	order by a court of competent jurisdiction.
21	C. A court of competent jurisdiction may enter an order extending the
22	delay of the disbursement of funds or may order other protective measures
23	based on the petition of the commissioner of securities, adult protective services,
24	the broker or other interested party.
25	D. A dealer or investment advisor that, in good faith and exercising
26	reasonable care, complies with this Section shall be immune from any
27	administrative or civil liability that might otherwise arise from such delay in a
28	disbursement.
29	§725.5. Receipt of notice and indemnity

 $\underline{any\,such\,party\,is\,reasonably\,believed\,to\,have\,engaged\,in\,suspected\,or\,attempted}$

1 No claim may be brought against the adult protection agency, 2 commissioner of securities, office of financial institutions or the state of 3 Louisiana in connection with receipt or response to any notice of financial 4 exploitation. 5 §725.6. Records A. A dealer or investment advisor shall provide access to or copies of 6 7 records that are relevant to the suspected or attempted financial exploitation of 8 an eligible adult to a governmental agency and to law enforcement, either as 9 part of a referral to the agency or to law enforcement pursuant to the 10 investigation. 11 B. The records may include historical records as well as records relating 12 to the most recent transaction or transactions that may comprise financial 13 exploitation of an eligible adult. C. All records made available under this Section shall be kept strictly 14 confidential and are not considered public records, as defined in the Louisiana 15 16 Public Records Act, R.S. 44:1. D. Nothing in this Section shall limit or otherwise impede the authority 17 of the commissioner of securities to access or examine the books and records of 18 19 brokers and investment advisors as otherwise provided by law. Section 2. This Act shall become effective upon signature by the governor or, if not 20 signed, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by 21 the governor and subsequently approved by the legislature, this Act shall become effective 22 23 on the day following such approval. The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary Dozier O'Brien.

SB 338 Original 2016 Regular Session

Martiny

<u>Proposed law</u> enacts the "Louisiana Protection of Vulnerable Adults from Financial Exploitation Law".

DIGEST

<u>Proposed law</u> provides for protection for vulnerable adults from financial exploitation.

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<u>Proposed law</u> provides immunity for certain governmental disclosures made in accordance with this Act.

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

<u>Proposed law</u> 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 upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 51:725-725.6)