

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2562

As Recommended by House Committee on
Financial Institutions and Pensions

Brief*

HB 2562 would create the Protect Vulnerable Adults from Financial Exploitation Act (Act), which would, among other things, require a broker-dealer or investment adviser to promptly report to designated protective agencies instances in which the financial exploitation of an eligible adult may have occurred or has or is being attempted. The bill would also allow a broker-dealer or investment adviser to delay a transaction with or disbursement from an account of an eligible adult, including account beneficiaries, when financial exploitation is expected. In addition, the bill would amend the Kansas Uniform Securities Act (KUSA) to include within provisions governing grounds for discipline a knowing failure to make a report required under the Protect Vulnerable Adults from Financial Exploitation Act.

Definitions (New Section 2)

The bill would establish several definitions within the Act, including:

- “Agent,” would be assigned its definition from the KUSA and would mean an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Broker-dealer,” also would be assigned its definition from the KUSA and would mean a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. [**Note:** Under this uniform act, “broker-dealer” does not include an agent; an issuer; certain banks, savings institutions, or trusts that meet specified conditions in the federal Securities Exchange Act of 1934; an international banking institution; or persons excluded by a rule or order adopted under the KUSA.]

- “Eligible adult” would mean an elder person or dependent adult as defined in a statute in the Kansas Criminal Code pertaining to the mistreatment of a dependent adult and the mistreatment of an elder person;
 - Under the Criminal Code provisions, an elder adult means a person 60 years of age or older; and
 - A dependent adult means an individual 18 years of age or older who is unable to protect the individual’s own interest.
 - This term also includes an individual who is (1) a resident of an adult care home; (2) an adult cared for in a private residence; (3) an individual kept, cared for, treated, boarded, confined, or otherwise accommodated in a medical care facility; (4) an individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility; (5) an individual with a developmental disability receiving services provided by a community service provider as provided in the Developmental Disability Reform Act; or (6) an individual kept, cared for,

treated, boarded, confined, or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

- “Financial exploitation” would mean the unlawful or improper use, control, or withholding of an eligible adult’s property, income, resources, or trust funds by any other person or entity to obtain or use an eligible adult’s property, income, resources, or trust funds in a manner that is not for the profit of or advantage of the eligible adult.

This term would include, but not be limited to:

- Use of deception, intimidation, coercion, extortion, or undue influence by a person or entity to obtain or use an eligible adult’s property, income, resources, or trust funds in a manner for the profit of or to the advantage of such person or entity;
 - Breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservator appointment, as it relates to property, income, resources, or trust funds of the eligible adult; or
 - Obtainment or use of an eligible adult’s property, income, resources, or trust funds, without lawful authority, by a person or entity who knows or clearly should know that the eligible adult lacks the capacity to consent to the release or use of such eligible adult’s property, income, resources, or trust funds.
- “Investment adviser” would be assigned its definition from the KUSA and would mean a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in,

purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation.

Under the KUSA, “investment adviser” does not include an investment adviser representative; a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession; a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; a publisher of a *bona fide* newspaper, news magazine, or business or financial publication of general and regular circulation; a federally regulated investment adviser; a bank, savings institution, or trust company; any other person excluded by the federal Investment Advisers Act of 1940 from the definition of investment adviser; or any other person excluded by rule adopted or order issued under the KUSA;

- “Protective agencies” would mean the state Securities Commissioner (Commissioner) and the Kansas Department for Children and Families; and
- “Qualified person,” would mean any agent, broker-dealer, investment adviser, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

The bill would also define the terms “act,” “commissioner,” “investment adviser representative,” and “person reasonably associated with the eligible adult.”

Governmental Disclosures; Immunity for Such Disclosures (New Sections 3-4)

The bill would provide that if a qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser shall promptly report the matter as permitted or required by law. [**Note:** KSA 38-1431 requires certain persons or entities to report instances when the person or entity has reasonable cause to suspect or believe that an adult is in need of protective services or being harmed as a result of abuse, neglect, or financial exploitation. Bank trust officers and other officers of financial institutions are required to make such reports. That act does not currently include those defined persons in the bill that are subject to regulation under the KUSA and the Commissioner.]

The bill would also provide that a qualified person who, in good faith and exercising reasonable care, makes a disclosure of information as required by the bill’s provisions (section 3), shall be immune from administrative and civil liability that might otherwise arise from such disclosure or for any failure to notify the eligible adult of this disclosure .

Third-party Disclosures; Immunity for Such Disclosures (New Sections 5-6)

The bill would provide that any person who, in good faith and exercising reasonable care, makes a disclosure of information as required by the bill’s provisions (section 3) may notify any person reasonably associated with the eligible adult of the disclosure, unless the qualified person suspects that such person reasonably associated with the eligible adult

has committed or attempted financial exploitation of such eligible adult.

The bill would also provide that a qualified person who, in good faith and exercising reasonable care, complies with the bill's provisions (section 5) shall be immune from any administrative and civil liability that might otherwise arise from such disclosure.

Delaying of Transactions and Disbursements; Immunity for Delaying (New Section 7-8)

The bill would permit a broker-dealer or investment adviser to delay a transaction associated with or a disbursement from an account of an eligible adult or an account on which the eligible adult is a beneficiary if:

- A qualified person reasonably believes, after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation, that the requested transaction or disbursement may further the financial exploitation of an eligible adult; and
- The broker-dealer or investment adviser:
 - Immediately, and within two business days after the date for the request to delay the transaction or disbursement, provides written notification of the delay and the reason for such delay to all parties authorized to transact business on the account, unless such qualified person reasonably believes that any such party is engaged in suspected or attempted financial exploitation of the eligible adult;
 - Immediately, and within two business days after the requested transaction or

disbursement is delayed, notifies the protective agencies; and

- Continues such internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the result of this investigation to the protective agencies upon request.

The bill would also provide that any authorized delay of a transaction or disbursement would expire on the soonest of:

- A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the adult; or
- Fifteen business days following the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement, unless either of the protective agencies requests that the broker-dealer or investment adviser extend the delay;
 - If the delay is extended, it shall expire not more than 25 business days after the date on which the transaction or disbursement was first delayed if not terminated sooner or further extended by either of the protective agencies or a court of competent jurisdiction.

The bill would permit a court of competent jurisdiction to enter an order extending the delay of the transaction or disbursement or may order other protective relief based on the petition of either of the protective agencies, the broker-dealer or investment adviser that initiated the delay, or another interested party.

Immunity

The bill would provide that a broker-dealer or investment adviser that, in good faith and exercising reasonable care,

complies with the bill's provisions (section 7), shall be immune from any administrative and civil liability that might otherwise arise from such delay of a transaction or disbursement in accordance with this act.

Records (New Section 9)

The bill would require a broker-dealer or investment adviser to provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the protective agencies or to law enforcement agencies, either as part of a referral to the protective agencies or to law enforcement agencies, or upon request of either protective agency or law enforcement agency pursuant to an investigation. The records could include historical records and records relating to the most recent transaction or transactions that may constitute financial exploitation of an eligible adult.

The bill would specify that no record made available to the Commissioner or other agencies under this act will be considered a public record under the Kansas Open Records Act (KSA 45-215 *et seq.*). The provisions pertaining to confidentiality of public records will expire on July 1, 2029, unless the Legislature reviews and acts to continue such provisions.

The bill would require the protective agencies, notwithstanding any provision of law to the contrary, to respond to reasonable inquiries from the notifying qualified person and allow disclosure to the notifying qualified person of the general status or final disposition of any investigation that arose from a report made by such qualified person.

The bill would further state that nothing in this act shall limit or otherwise impede the authority of the Commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Kansas Uniform Securities Act Amendments — Grounds for Discipline (Section 10)

The bill would amend provisions in the KUSA applying to discipline of applicants and registrants to add criteria to the criteria provided for grounds for discipline, which includes censure; a bar or suspension with a broker-dealer or investment adviser registered in the state; and a civil penalty up to \$25,000 for each violation. The bill also would add a knowing failure to make a report required under the Protect Vulnerable Adults from Financial Exploitation Act or knowingly causing such report to not be made within the previous ten years.

Background

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of a representative of the Kansas Insurance Department.

[Note: In January 2016, the North American Securities Administrators Association (NASAA) approved its Model Act to Protect Vulnerable Adults from Financial Exploitation (Model Act). According to written testimony submitted by NASAA for the hearing on HB 2562, as of January 2024, 38 jurisdictions have state laws that informed, or are inspired by, the Model Act.]

House Committee on Financial Institutions and Pensions

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Insurance Department, AARP Kansas, the Kansas Association of Area Agencies on Aging and Disabilities, and the National Association of Insurance and Financial Advisers of Kansas. The Kansas Insurance Department representative indicated the bill is integrated with existing regulatory and criminal protections and would give financial professionals addition

tools to promote their clients' best interests when they are subjected to unlawful financial exploitation. The bill would make it easier for these professionals to report financial exploitation and grant ability to slow down a requested transaction or disbursement to allow time for verification of its legitimacy. Proponents addressed concerns regarding the need to enact additional safeguards to address certain risks and influences on vulnerable persons.

Written-only proponent testimony was submitted by representatives of AE Wealth Management, LLC and AE Financial Services, LLC; the Department for Children and Families (DCF); the Kansas Council on Developmental Disabilities; NASAA; the Public Investors Advocate Bar Association; and the Securities Industry and Financial Markets Association. These proponents highlighted the concerns of financial exploitation and the need for tools to permit a "report and hold," allowing investment entities to report and place temporary holds on suspicious transactions and disbursements. The DCF testimony expressed concern about a provision pertaining to reporting the status of an investigation or the results of an investigation and current notification and reporting requirements on the agency.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget, enactment of the bill would have no effect on several state agencies and some effect as outlined by the Office of Judicial Administration. The fiscal note also addresses the bill's fiscal effect on local governments.

The Kansas Insurance Department states that even though the bill would increase reports of financial exploitation of elder and dependent adults, the agency has sufficient resources to be able to receive and investigate the reports.

Therefore, the bill would not have a fiscal effect on the agency.

DCF states that the bill would not have a fiscal effect but could result in premature applications for Medicaid. DCF currently works with the Department of Health and Environment Medicaid eligibility staff when vulnerable adults have been victims of financial exploitation, which occurs in approximately 125 cases per year. This is current practice, and therefore no additional expenditures are anticipated.

The Office of Judicial Administration states that the bill could increase the number of cases filed in district courts because it authorizes certain civil or administrative court actions. The bill would allow for judicial review and administrative action for the failure-to-report violations, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. The bill could also result in the collection of docket fees that would be deposited into the State General Fund. However, the agency cannot estimate the overall fiscal effect of the bill.

The Office of the Attorney General states the bill would not have a fiscal effect on the agency.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates that the bill would not have a fiscal effect on counties unless current resources are not adequate to handle additional prosecution and court needs. The League of Kansas Municipalities states the bill would not have a fiscal effect on cities.

Vulnerable persons; Protect Vulnerable Adults from Financial Exploitation Act; financial exploitation; eligible adults; broker-dealers; investment advisers; delay of transaction or disbursement; records and reporting; Department for Children and Families; Securities Commissioner; Kansas Uniform Securities Act