

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 2-8-17
Original **Amendment** **Bill No:** HB326
Correction **Substitute**

Sponsor: Maestas Barnes & N. Salazar **Agency Code:** 264
Short Protection of **Person Writing** Gail MacQuesten
Title: Vulnerable Adults **Phone:** 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB325
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB326 enacts the Protecting Vulnerable Adults from Financial Exploitation Act.

The vulnerable adults protected under the act are persons sixty-five years of age or older, and incapacitated persons eighteen years of age or older. “Incapacitated” means a person with a mental, physical or developmental condition that substantially impairs the person’s ability to provide adequately for the person’s own care or protection.

The exploitation addressed by the act is the wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property, or any act or omission taken by a person (including through the use of a power of attorney, guardianship or conservatorship) to obtain control, through deception, intimidation or undue influence, or to convert money, assets or property to deprive the vulnerable adult of the ownership, use, benefit or possession of the money, assets or property.

If a “qualified individual,” meaning an agent, investment advisor representative or a person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser, reasonably believes that financial exploitation of a vulnerable adult has occurred or is being attempted, he or she shall promptly notify the securities division of the regulation and licensing department and the adult protective services division of the aging and long-term services department. The act provides for immunity from administrative or civil liability for the qualified individual, and allows that individual to notify a third party (previously designated by the eligible adult). 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 he or she reasonably believes that the disbursement may result in financial exploitation, and must promptly notify all parties authorized to transact business on the account (except a party engaged in the exploitation), and notify the agencies. A delay of disbursement will expire unless the agencies request an extension or a court issues an order. The broker-dealer has immunity from administrative or civil liability for such delay if that person has completed training required by rule adopted or order issued by the director of the securities division of the regulation and licensing department.

A broker-dealer or investment adviser shall provide access to or copies of relevant records to the agencies and to law enforcement. The records shall not be considered a public record under the Public Records Act.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

There are no direct fiscal implications for the district attorneys. It is possible that the requirements of the act will lead to more prosecutions under the New Mexico Uniform Securities Act, which will result in increased costs of prosecution.

The fiscal implications are more direct for the securities division of the regulation and licensing department and the adult protective services division of the aging and long-term services department, as they will be investigating the alleged financial exploitation situations. And the regulation and licensing department is responsible for the training of broker-dealers and investment advisors.

SIGNIFICANT ISSUES

HB326 protects certain financial professionals who report suspected financial exploitation of vulnerable adults, and allows broker-dealers and investment advisers to delay transactions when they suspect financial exploitation.

HB326 contains no criminal provisions, so it has no direct impact on the district attorneys. However, HB326 may result in more prosecutions under the New Mexico Uniform Securities Act as suspected financial exploitation situations are more likely to be reported and investigated.

PERFORMANCE IMPLICATIONS

None, for the district attorneys.

ADMINISTRATIVE IMPLICATIONS

HB326 should give the district attorneys greater access to records in cases of suspected financial exploitation, while protecting those records from disclosure under the Public Records Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB325 amends the New Mexico Uniform Securities Act to provide enhanced criminal penalties for certain violations if the victim is over the age of sixty.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have a statute protecting certain financial professionals who see and report suspected financial exploitation of vulnerable adults, and will not have a provision allowing those professionals to delay disbursements in an attempt to prevent such exploitation.

AMENDMENTS

None proposed.