

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0103.02 Christy Chase

SENATE BILL 10-042

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Frangas and Kefalas,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING PRIOR CONSENT FOR RELEASE OF FINANCIAL
102 INFORMATION TO FACILITATE INVESTIGATIONS OF FINANCIAL
103 EXPLOITATION OF AT-RISK ADULTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under the "Protection Against Financial Exploitation of At-risk Adults Act" in the "Colorado Human Services Code", current law requires banks, industrial banks, federal savings banks, savings and loan associations, building and loan associations, trust companies, and credit

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

unions (financial institutions), only upon request of a consumer, to offer the requesting consumer, who is either over 60 years of age or is an at-risk adult, the option to sign an informed consent form for placement in the consumer's file or records, thereby allowing the financial institution to disclose the consumer's financial information or records in connection with an investigation of known or suspected financial exploitation of the consumer.

The bill relocates this provision to the "Colorado Banking Code" and requires financial institutions to inform all account holders who are at-risk adults of their right to voluntarily sign and have placed in their bank records a consent form. The name of the form is changed to a "prior consent" form to reflect that the account holder is giving his or her consent, prior to any alleged or suspected financial exploitation activities, to the release of otherwise confidential records so as to allow a financial institution to alert or notify local law enforcement and the county or district department of social services of potential financial exploitation and provide access to those records to expedite an investigation and minimize losses suffered by victims as a result of financial exploitation. The state bank commissioner is to work with stakeholders to develop a standard prior consent form to be used by financial institutions.

"At-risk adult" is defined, consistent with the "Colorado Criminal Code", as a person who is:

- ! 60 years of age or older; or
- ! 18 years of age or older and is a person with a disability.

Financial institutions and their employees and agents are granted civil and criminal immunity when they either disclose or fail to disclose an account holder's financial information pursuant to a signed prior consent form or report or fail to report financial exploitation of an eligible account holder.

By adding the requirement to the "Colorado Banking Code", the bill allows enforcement of these requirements by the state bank commissioner.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 1 of article 105 of title 11, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **11-105-113. Release of financial information - prior consent -**
6 **financial exploitation investigations - definitions - legislative**
7 **declaration.** (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

1 (I) FINANCIAL EXPLOITATION OF AT-RISK ADULTS IS AN AREA OF
2 SIGNIFICANT CONCERN;

3 (II) AT-RISK ADULTS COMPRISE AN INCREASINGLY LARGE SEGMENT
4 OF SOCIETY, AND THE FINANCIAL EXPLOITATION OF SUCH PERSONS IS
5 OCCURRING AT AN EVER-INCREASING RATE;

6 (III) PERSONS COMMITTING FINANCIAL EXPLOITATION OF AT-RISK
7 ADULTS MAY BE PERSONS KNOWN TO THE AT-RISK ADULT OR STRANGERS
8 PERPETRATING FRAUDULENT SCHEMES, AND MAY BE IN A POSITION TO
9 THREATEN TO WITHHOLD CARE, MANIPULATE, OR DECEIVE AN AT-RISK
10 ADULT;

11 (IV) AT-RISK ADULTS MAY NOT REPORT OR PREVENT FINANCIAL
12 EXPLOITATION DUE TO LACK OF INFORMATION, FEAR, OR INTIMIDATION;

13 (V) FINANCIAL INSTITUTIONS ARE IN UNIQUE POSITIONS TO
14 ACQUIRE EARLY KNOWLEDGE OF FINANCIAL EXPLOITATION BY NOTICING
15 INDICATORS SUCH AS SUDDEN CHANGES IN BANK ACCOUNT ACTIVITY OR
16 BANKING PRACTICES; UNEXPLAINED WITHDRAWALS OR ATYPICAL
17 TRANSACTIONS INVOLVING WITHDRAWALS; ABRUPT CHANGES TO WILLS OR
18 OTHER FINANCIAL DOCUMENTS REQUESTED BY THE AT-RISK ADULT; THE
19 SUDDEN APPEARANCE OF PREVIOUSLY UNINVOLVED RELATIVES CLAIMING
20 A RIGHT TO THE AT-RISK ADULT'S AFFAIRS AND POSSESSIONS; AND
21 UNEXPLAINED, SUDDEN TRANSFERS OF ASSETS TO A FAMILY MEMBER OF
22 THE AT-RISK ADULT OR ANOTHER PERSON OUTSIDE OF THE AT-RISK
23 ADULT'S FAMILY;

24 (VI) WHILE FINANCIAL INSTITUTIONS ARE OFTEN IN A POSITION TO
25 NOTICE INDICATORS OF FINANCIAL EXPLOITATION, THEY MAY BE LIMITED
26 IN THEIR ABILITY TO RELEASE FINANCIAL RECORDS IMMEDIATELY TO LAW
27 ENFORCEMENT BECAUSE OF THEIR OBLIGATIONS TO MAINTAIN

1 CONFIDENTIALITY OF BANK FILES AND RECORDS;

2 (VII) BY OBTAINING A SIGNED PRIOR CONSENT FORM FROM
3 ACCOUNT HOLDERS WHO ARE AT-RISK ADULTS, FINANCIAL INSTITUTIONS
4 CAN COOPERATE AND SHARE VITAL INFORMATION WITH LAW
5 ENFORCEMENT AND ADULT PROTECTIVE SERVICE AGENCIES, ALLOWING
6 THOSE ENTITIES TO RESPOND MORE QUICKLY TO KNOWN OR SUSPECTED
7 INSTANCES OF FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

8 (b) THEREFORE, THE GENERAL ASSEMBLY FINDS AND DETERMINES
9 THAT IT IS APPROPRIATE TO REQUIRE FINANCIAL INSTITUTIONS, WHO MAY
10 BE IN A POSITION TO OBSERVE INDICATORS OF FINANCIAL EXPLOITATION,
11 TO TAKE STEPS TO PROTECT AT-RISK ADULTS FROM FINANCIAL
12 EXPLOITATION BY OFFERING AT-RISK ADULTS THE OPTION TO SIGN A PRIOR
13 CONSENT FORM SO AS TO FACILITATE RAPID RESPONSE FROM LAW
14 ENFORCEMENT AND ADULT PROTECTIVE SERVICE AGENCIES.

15 (2) AS USED IN THIS SECTION:

16 (a) "AT-RISK ADULT" HAS THE SAME MEANING AS SET FORTH IN
17 SECTION 18-6.5-102, C.R.S.

18 (b) "COUNTY DEPARTMENT" MEANS A COUNTY OR DISTRICT
19 DEPARTMENT OF SOCIAL SERVICES.

20 (c) "ELIGIBLE ACCOUNT HOLDER" MEANS A PERSON WHO OPENS OR
21 HAS AN ACCOUNT AT A FINANCIAL INSTITUTION ESTABLISHED PRIMARILY
22 FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES AND WHO IS OR
23 BECOMES, WHILE HOLDING AN ACCOUNT AT THE FINANCIAL INSTITUTION,
24 AN AT-RISK ADULT.

25 (d) "FINANCIAL EXPLOITATION" MEANS THE ILLEGAL OR IMPROPER
26 USE OF AN AT-RISK ADULT'S FINANCIAL RESOURCES FOR ANOTHER
27 PERSON'S PROFIT OR ADVANTAGE.

1 (e) "FINANCIAL INSTITUTION" MEANS A BANK, INDUSTRIAL BANK,
2 FEDERAL SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR COMPANY,
3 BUILDING AND LOAN ASSOCIATION, TRUST COMPANY, OR CREDIT UNION.

4 (3) (a) A FINANCIAL INSTITUTION SHALL OFFER EACH ELIGIBLE
5 ACCOUNT HOLDER THE OPTION TO VOLUNTARILY SIGN A PRIOR CONSENT
6 FORM FOR PLACEMENT IN THE ELIGIBLE ACCOUNT HOLDER'S FILE OR
7 RECORD MAINTAINED BY THE FINANCIAL INSTITUTION. THE FINANCIAL
8 INSTITUTION SHALL PROVIDE NOTICE OF THE AVAILABILITY OF THE OPTION,
9 INCLUDING A DESCRIPTION OF THE PURPOSE OF THE PRIOR CONSENT AS
10 DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (3), WHEN THE
11 FINANCIAL INSTITUTION ESTABLISHES A CUSTOMER RELATIONSHIP WITH AN
12 ELIGIBLE ACCOUNT HOLDER AND AT LEAST ANNUALLY DURING THE
13 CONTINUATION OF THE RELATIONSHIP. THE FINANCIAL INSTITUTION MAY
14 PROVIDE THE NOTICE REQUIRED BY THIS SUBSECTION (3) IN CONJUNCTION
15 WITH THE DISCLOSURE REQUIRED BY 15 U.S.C. SEC. 6803.

16 (b) BY SEPTEMBER 1, 2010, THE COMMISSIONER SHALL DEVELOP,
17 WITH INPUT FROM FINANCIAL INSTITUTIONS, COUNTY DEPARTMENTS,
18 LOCAL LAW ENFORCEMENT, DISTRICT ATTORNEYS, AT-RISK ADULTS, AND
19 OTHER STAKEHOLDERS, A STANDARD PRIOR CONSENT FORM TO BE USED BY
20 FINANCIAL INSTITUTIONS.

21 (c) BY SIGNING A PRIOR CONSENT FORM, AN ELIGIBLE ACCOUNT
22 HOLDER WAIVES THE CONFIDENTIALITY LIMITATIONS RELATED TO HIS OR
23 HER FINANCIAL RECORDS MAINTAINED AT THE FINANCIAL INSTITUTION FOR
24 THE LIMITED PURPOSE OF ALLOWING THE FINANCIAL INSTITUTION TO
25 ALERT OR NOTIFY THE COUNTY DEPARTMENT AND A LOCAL LAW
26 ENFORCEMENT AGENCY OF KNOWN OR SUSPECTED FINANCIAL
27 EXPLOITATION OF THE ELIGIBLE ACCOUNT HOLDER AND PROVIDE THE

1 COUNTY DEPARTMENT AND LOCAL LAW ENFORCEMENT ACCESS TO THE
2 ACCOUNT HOLDER'S RECORDS TO INVESTIGATE KNOWN OR SUSPECTED
3 FINANCIAL EXPLOITATION OF THE ELIGIBLE ACCOUNT HOLDER.

4 (d) A PRIOR CONSENT FORM EXECUTED PURSUANT TO THIS SECTION
5 IS EFFECTIVE UNTIL THE FINANCIAL INSTITUTION RECEIVES WRITTEN
6 NOTICE OF REVOCATION AND SURVIVES ANY DISABILITY OF THE ELIGIBLE
7 ACCOUNT HOLDER THAT OCCURS AFTER THE EXECUTION OF THE PRIOR
8 CONSENT FORM. IN THE ABSENCE OF ACTUAL KNOWLEDGE OF A JUDICIAL
9 DETERMINATION OF INCAPACITY, A FINANCIAL INSTITUTION MAY ASSUME
10 THAT ANY ELIGIBLE ACCOUNT HOLDER THAT EXECUTES A PRIOR CONSENT
11 FORM HAS THE LEGAL CAPACITY TO PERFORM THE ACT.

12 (4) A FINANCIAL INSTITUTION OR AN AGENT OR EMPLOYEE OF A
13 FINANCIAL INSTITUTION THAT DISCLOSES OR FAILS TO DISCLOSE RECORDS
14 OR INFORMATION ON THE DIRECTION CONTAINED IN A PRIOR CONSENT
15 FORM SIGNED BY AN ELIGIBLE ACCOUNT HOLDER IN ACCORDANCE WITH
16 THIS SECTION, OR THAT REPORTS OR FAILS TO REPORT FINANCIAL
17 EXPLOITATION OF AN ELIGIBLE ACCOUNT HOLDER, SHALL NOT BE CIVILLY
18 OR CRIMINALLY LIABLE FOR THE DISCLOSURE OR REPORT, OR FOR FAILING
19 TO MAKE SUCH DISCLOSURE OR REPORT, AND SHALL NOT BE LIABLE TO THE
20 ELIGIBLE ACCOUNT HOLDER OR ANY OTHER PERSON FOR MAKING OR
21 FAILING TO MAKE THE DISCLOSURE OR REPORT.

22 (5) A FINANCIAL INSTITUTION IS SUBJECT TO ANY MEASURES
23 DEEMED NECESSARY BY THE COMMISSIONER, CONSISTENT WITH THE
24 "COLORADO BANKING CODE" AND THE POLICIES AND RULES OF THE
25 BANKING BOARD, TO ENFORCE COMPLIANCE WITH THIS SECTION.

26 **SECTION 2. Repeal.** 26-3.1-206, Colorado Revised Statutes, is
27 repealed.

1 **SECTION 3. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.