

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 10-042

BY SENATOR(S) Schwartz, Boyd, Carroll M., Gibbs, Hudak, Johnston, Keller, Newell, Romer, Shaffer B., Steadman, Tapia, Williams;
also REPRESENTATIVE(S) Frangas and Kefalas, Apuan, Casso, King S., Labuda, Todd.

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

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

SECTION 1. Title 6, Colorado Revised Statutes, is amended BY
THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 21
Protection Against Financial Exploitation

6-21-101. Legislative declaration. (1) THE GENERAL ASSEMBLY
HEREBY FINDS THAT:

(a) FINANCIAL EXPLOITATION OF AT-RISK ADULTS IS AN AREA OF
SIGNIFICANT CONCERN;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

(f) WHILE FINANCIAL INSTITUTIONS ARE OFTEN IN A POSITION TO NOTICE INDICATORS OF FINANCIAL EXPLOITATION, THEY MAY BE LIMITED IN THEIR ABILITY TO RELEASE FINANCIAL RECORDS IMMEDIATELY TO LAW ENFORCEMENT AND COUNTY DEPARTMENTS BECAUSE OF THEIR OBLIGATIONS TO MAINTAIN CONFIDENTIALITY OF BANK FILES AND RECORDS;

(g) BY OBTAINING A SIGNED PRIOR CONSENT FORM FROM ACCOUNT HOLDERS WHO ARE AT-RISK ADULTS, FINANCIAL INSTITUTIONS CAN COOPERATE AND SHARE VITAL INFORMATION WITH LAW ENFORCEMENT AND COUNTY DEPARTMENTS, ALLOWING THOSE ENTITIES TO RESPOND MORE QUICKLY TO KNOWN OR SUSPECTED INSTANCES OF FINANCIAL EXPLOITATION OF AT-RISK ADULTS.

(2) THEREFORE, THE GENERAL ASSEMBLY FINDS AND DETERMINES THAT IT IS APPROPRIATE TO REQUIRE FINANCIAL INSTITUTIONS, WHO MAY BE IN A POSITION TO OBSERVE INDICATORS OF FINANCIAL EXPLOITATION, TO

OFFER AT-RISK ADULTS THE OPTION TO SIGN A PRIOR CONSENT FORM SO AS TO FACILITATE RAPID RESPONSE FROM LAW ENFORCEMENT AND COUNTY DEPARTMENTS.

6-21-102. Definitions. AS USED IN THIS ARTICLE:

(1) "ACCOUNT HOLDER" MEANS A PERSON WHO OPENS OR HAS AN ACCOUNT AT A FINANCIAL INSTITUTION ESTABLISHED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

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

(3) "COUNTY DEPARTMENT" MEANS A COUNTY OR DISTRICT DEPARTMENT OF SOCIAL SERVICES.

(4) "ELIGIBLE ACCOUNT HOLDER" MEANS AN ACCOUNT HOLDER WHO IS OR BECOMES, WHILE HOLDING AN ACCOUNT AT THE FINANCIAL INSTITUTION, AN AT-RISK ADULT.

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

(6) "FINANCIAL INSTITUTION" MEANS A STATE OR FEDERAL BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR COMPANY, BUILDING AND LOAN ASSOCIATION, TRUST COMPANY, OR CREDIT UNION.

6-21-103. Release of financial information - prior consent - financial exploitation investigations - civil immunity. (1) (a) A FINANCIAL INSTITUTION SHALL OFFER EACH ELIGIBLE ACCOUNT HOLDER, AND MAY OFFER ALL ACCOUNT HOLDERS, THE OPTION TO VOLUNTARILY SIGN A PRIOR CONSENT FORM FOR PLACEMENT IN THE ACCOUNT HOLDER'S FILE OR RECORD MAINTAINED BY THE FINANCIAL INSTITUTION. THE FINANCIAL INSTITUTION SHALL PROVIDE NOTICE OF THE AVAILABILITY OF THE OPTION, INCLUDING A DESCRIPTION OF THE PURPOSE OF THE PRIOR CONSENT AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1), WHEN THE FINANCIAL INSTITUTION ESTABLISHES A CUSTOMER RELATIONSHIP WITH AN ELIGIBLE ACCOUNT HOLDER AND AT LEAST ANNUALLY DURING THE CONTINUATION OF THE RELATIONSHIP. THE FINANCIAL INSTITUTION MAY PROVIDE THE NOTICE

REQUIRED BY THIS SUBSECTION (1) IN CONJUNCTION WITH THE DISCLOSURE REQUIRED BY 15 U.S.C. SEC. 6803.

(b) BY SEPTEMBER 1, 2010, THE ATTORNEY GENERAL SHALL DEVELOP, WITH INPUT FROM THE DIVISION OF BANKING AND THE DIVISION OF FINANCIAL SERVICES IN THE DEPARTMENT OF REGULATORY AGENCIES, REPRESENTATIVES OF FINANCIAL INSTITUTIONS, COUNTY DEPARTMENTS, LOCAL LAW ENFORCEMENT, DISTRICT ATTORNEYS, AT-RISK ADULTS, AND OTHER STAKEHOLDERS, A STANDARD PRIOR CONSENT FORM THAT MAY BE USED BY FINANCIAL INSTITUTIONS.

(c) BY SIGNING A PRIOR CONSENT FORM, AN ACCOUNT HOLDER WAIVES THE CONFIDENTIALITY LIMITATIONS RELATED TO HIS OR HER FINANCIAL RECORDS MAINTAINED AT THE FINANCIAL INSTITUTION FOR THE LIMITED PURPOSE OF ALLOWING THE FINANCIAL INSTITUTION TO ALERT OR NOTIFY THE COUNTY DEPARTMENT AND A LOCAL LAW ENFORCEMENT AGENCY OF KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF THE ACCOUNT HOLDER AND PROVIDE THE COUNTY DEPARTMENT AND LOCAL LAW ENFORCEMENT ACCESS TO THE ACCOUNT HOLDER'S RECORDS TO INVESTIGATE KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF THE ACCOUNT HOLDER.

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

(2) NOTHING IN THIS ARTICLE OR IN A SIGNED PRIOR CONSENT FORM OBLIGATES A FINANCIAL INSTITUTION TO REPORT KNOWN OR SUSPECTED FINANCIAL EXPLOITATION OF AN ACCOUNT HOLDER.

SECTION 2. 26-3.1-206, Colorado Revised Statutes, is amended to read:

26-3.1-206. Prior consent form. ~~Upon request,~~ A financial institution shall offer ~~any adult over the age of sixty or any at-risk adult with~~

~~an account at such institution~~ ELIGIBLE ACCOUNT HOLDERS, AS DEFINED IN SECTION 6-21-102, C.R.S., the option of signing ~~an informed~~ A PRIOR consent form prior to any report of financial exploitation, for placement in the account holder's file or record maintained by the financial institution. ~~The informed consent form shall waive confidentiality limitations related to an account holder's financial records maintained at the financial institution for the limited purpose of allowing the financial institution, the county department, and a local law enforcement agency access to the account holder's records for the limited purpose of investigating known or suspected financial exploitation of an at-risk adult~~ IN ACCORDANCE WITH SECTION 6-21-103, C.R.S.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO