



New York State YMCA
Youth And Government

WWW.YMCANYS.ORG

FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Committee Assignment: Senate 2

Bill #: S-11

Sponsors: Benjamin McNutt and Richard Kaufman IV

1 **AN ACT TO:** Amend Article 5 of the General Obligations Law by adding Title 18 in relation to
2 mandating disclosure of non-fiduciaries who provide investment advice, and mandate all
3 individuals providing investment advice in relation to retirement savings and funds act as a
4 fiduciary in that regard.

5
6 *The People of the State of New York, represented in the Senate and Assembly, do enact as follows:*

7
8 **PURPOSE:** We initiate this bill to mandate greater disclosure and transparency among non-
9 fiduciaries serving as financial and investment advisors in an effort to protect New York.

10 **SUMMARY OF PROVISIONS:**

11 Section 1: Definitions

12 Fiduciary: An individual who is legally obligated to act according to any instructions from their
13 client(s) or, where
14 there are no instructions, act in the best interest of their client(s), and to avoid conflicts of
15 interests.

16 Non-Fiduciary: An individual who is not legally obligated to uphold the duties of a fiduciary,
17 and is therefore not obligated to act in the best interests of their client(s).

18 Financial Advisor: An individual who provides guidance in relation to investment decisions in a
19 formal setting for payment, a title for which no license is required. As referred to in Section 2,
20 financial advisors include but are not limited to individuals and organizations identifying as:
21 brokers, dealers, investment advisors, financial planners, or financial consultants.

22 Retirement Funds: Any funds dedicated for retirement, located in accounts including but not
23 limited to: 401(k), 403(b), IRA, and HSA.

24 Disclosure: The action of making something known by one party to all parties via a verbal or
25 written statement.

26 **Section 2:**

27 § 5 TITLE 18

28 FINANCIAL ADVISORS TRANSPARENCY AND REGULATION

29 § 5-1801. All non-fiduciary financial advisors are required to make a plain language disclosure
30 to their clients verbally and in writing at the outset of their relationship which ensures their
31 clients understand their advisor's potential conflicts of interest. Such disclosure will read as
32 follows: "I am not a fiduciary. Therefore, I am not required to act in your best interests, and I
33 am allowed to recommend investments and decisions which may serve to monetarily benefit
34 myself and my firm, even if such investments or courses of action are not best suited for your
35 interests or situation."

36 2. Clients of non-fiduciary financial advisors must sign an acknowledgement that the advisor
37 provided the plain language disclosure as stated in § 5-1801.1. Such signed acknowledgement
38 is to be kept in the possession of the non-fiduciary advisor or his or her firm or organization,
39 and it must be able to be produced and provided should it be requested by a pertinent
40 government agency or party with such jurisdiction in relation to pertinent investigations or
41 legal inquiries. The advisor must also give a copy to their client.



New York State YMCA
Youth And Government

WWW.YMCANYS.ORG

FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Committee Assignment: Senate 2

Bill #: S-11

42 3. An individual or firm who fails to produce such signed acknowledgement documents upon
43 request by pertinent government agencies or other parties with such jurisdiction can be
44 charged with Falsifying Business Records in the first degree, a Class E Felony. Convicted
45 individuals or firms will be subject to punishment outlined in applicable sections of the New
46 York State Penal Code, including a fine of up to five thousand dollars and jail time.

47 4. An individual or firm who is found to have failed to provide adequate disclosure of their
48 non-fiduciary status can be charged with Issuing a False Certificate, a Class E Felony.
49 Convicted individuals and firms will be subject to punishments outlined in applicable sections of
50 the New York State Penal Code, including a fine of up to five thousand dollars and jail time.
51 § 5-1802 All financial advisors dealing with retirement funds shall be required to act as a
52 fiduciary when working with the retirement funds, sufficiently carrying out for their clients all
53 the required legal obligations and duties of a fiduciary.

54 2. Financial advisors who manage and work with funds both retirement and not, are only
55 required to act as a fiduciary when making decisions and suggestions regarding the retirement
56 funds. When not acting as a fiduciary regarding a client's non-retirement funds, that individual
57 must make the same disclosure detailed in § 5-1801.

58 3. Any individual or firm found to be in violation of their fiduciary duties can be charged with
59 Scheming to Defraud in the first degree, a Class E Felony. Convicted individuals and firms will
60 be subject to punishments outlined in applicable sections of the New York State Penal Code,
61 including a fine of up to five thousand dollars and jail time.

62 **JUSTIFICATION:**

63 According to a Reuters report, there were approximately 285,000 financial advisors in the
64 United States as of 2015. This is a vast number of choices for American and New York
65 consumers to choose from, however a lack of regulation and transparency makes these choices
66 a near minefield to navigate for the average citizen. A large amount of those 285,000 financial
67 advisors are what as known as non-fiduciaries, or individuals who are not legally obligated or
68 required to act in the best interests of their clients. Instead, these non-fiduciaries can make
69 decisions and suggestions which can result in a great deal of fees or monetary gain for
70 themselves and their firm while their clients may stand to benefit very little. Due to there being
71 no required disclosure as to whether or not financial advisors are non-fiduciaries, we have no
72 clue how many financial advisors fall into this category, and neither do consumers. These are
73 troubling circumstances, especially considering how many retirees or retiring New Yorkers
74 frequent these same types of advisors for retirement fund advice. According to the Bureau of
75 Labor Statistics, the median annual pay for a financial advisor in 2017 was a staggering
76 \$90,000 compared to the real median household income of \$61,000 for the same year. The
77 financial services industry specifically advisors continue to see monetary success while the
78 benefits seen by their clients are often questionable at best. This bill will serve to educate and
79 protect New York consumers when dealing with financial advisors, and help us understand just
80 how widespread this problem is.

81 **FISCAL IMPLICATIONS:** Minimal to none. Passage of this bill will have a negligible effect on
82 the New York State budget.

83 **EFFECTIVE DATE:** This bill shall go into effect on January 1st following one full year after
84 passage.