[First Reprint]

ASSEMBLY, No. 5091

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 25, 2019

Sponsored by:
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District 27 (Essex and Morris)
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District 37 (Bergen)

SYNOPSIS

"Safeguarding Against Financial Exploitation Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 25, 2019.

(Sponsorship Updated As Of: 2/26/2019)

AN ACT concerning financial exploitation of vulnerable adults and supplementing P.L.1967, c.93 (C.49:3-47 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Safeguarding Against Financial Exploitation Act."

2. As used in this act:

"Applicable county adult services provider" means the county adult services provider that services the county of residence of the eligible adult.

"County adult protective services provider" has the meaning in section 2 of P.L.1993, c.249 (C.52:27D-407).

"Eligible adult" means:

(1) a person 65 years of age or older; or

(2) a person subject to the "Adult Protective Services Act," P.L.1993, c.249 (C.52:27D-406 et seq.).

"Financial exploitation" means:

(1) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or

(2) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(a) obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or

(b) convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.

"Qualified individual" means **[1]**[any agent]**[1]** a broker-dealer**[1]**, investment adviser **[1]**[representative]**[1]** or other person who serves in a supervisory, compliance, **[1]**[or]**[1]** legal **[1]**, or senior investor protection**[1]** capacity for a broker-dealer or investment adviser.

3. a. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify the bureau and the applicable county adult protective services provider.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly floor amendments adopted March 25, 2019.

b. A qualified individual who, in good faith and exercising reasonable care, makes a disclosure in compliance with this section shall be immune from administrative, civil or criminal liability that might otherwise arise from such disclosure or for any failure to notify the [1]**[**customer**]** eligible adult[1] of the disclosure.

[1]c. Following a notification to the bureau from a qualified individual pursuant to this section, the bureau shall respond to reasonable inquiries from the qualified individual as to the status of any investigation by the bureau, and upon conclusion of any investigation, the bureau shall issue a statement of findings to the qualified individual.[1]

4. a. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual [1]**[**shall**]** may[1] notify any third party previously designated by [1], or reasonably associated with,[1] the eligible adult, provided that disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

b. A qualified individual who, in good faith and exercising reasonable care, makes a disclosure in compliance with this section shall be immune from any administrative, civil or criminal liability that might otherwise arise from such disclosure.

5. a. A broker-dealer or investment adviser may delay a [1]transaction in connection with, or a[1] disbursement from , an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested [1]transaction or[1] disbursement and the suspected financial exploitation, that the requested [1]transaction or[1] disbursement may result in financial exploitation of an eligible adult; and

(2) the broker-dealer or investment adviser:

(a) immediately, but in no event more than two business days after the requested [1]transaction or[1] disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(b) immediately, but in no event more than two business days after the requested [1]transaction or[1] disbursement, notifies the bureau and the applicable county adult protective services provider; and

(c) continues the internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports

the investigation's results to the bureau and the applicable county adult protective services provider [1]⟦within seven business days after the requested disbursement⟧ upon request[1].

b. Any delay of a [1]transaction or[1] disbursement as authorized by this section shall expire upon the sooner of:

(1) a determination by the broker-dealer or investment adviser that the [1]transaction or[1] disbursement will not result in financial exploitation of the eligible adult; or

(2) 15 business days after the date on which the broker-dealer or investment adviser first delayed [1]the transaction or[1] disbursement of the funds, unless either the bureau or the applicable county adult protective services provider requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than 25 business days after the date on which the broker-dealer or investment adviser first delayed [1]the transaction or[1] disbursement of the funds, unless [1]⟦sooner⟧ otherwise[1] terminated [1]or further extended[1] by either of the agencies or an order of a court of competent jurisdiction.

c. A court of competent jurisdiction may enter an order extending the delay of the [1]transaction or[1] disbursement of funds or may order other protective relief based on the petition of the bureau, the applicable county adult protective services provider, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.

d. A broker-dealer or investment adviser who, in good faith and exercising reasonable care, acts in compliance with this section shall be immune from any administrative, civil or criminal liability that might otherwise arise from such delay in a [1]transaction or[1] disbursement in accordance with this section.

6. [1]a.[1] A broker-dealer or investment adviser shall provide access to, or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering State adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be deemed to be a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et seq.). Nothing in this section shall limit or otherwise impede the authority of the bureau to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

[1]b. A broker-dealer or investment advisor who, in good faith and exercising reasonable care, acts in compliance with this section

shall be immune from any administrative, civil or criminal liability that might otherwise arise from providing access in accordance with this section.[1]

7. This act shall take effect on the 90th day next following the date of enactment.