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I N   S E N A T E

April 2, 2014

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to establishing the opt in program for reporting of suspected financial exploitation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The banking law is amended by adding a new article 2-D to  
2     read as follows:

3     ARTICLE 2-D

4     FINANCIAL EXPLOITATION

5     SECTION 90. OPT IN PROGRAM FOR REPORTING OF SUSPECTED FINANCIAL EXPLOI-  
6     TATION.

7     S 90. OPT IN PROGRAM FOR REPORTING OF SUSPECTED FINANCIAL EXPLOITA-  
8     TION. 1. AS USED IN THIS ARTICLE:

9        (A) "ADULT PROTECTIVE SERVICES AGENCY" SHALL MEAN A LOCAL SOCIAL  
10     SERVICES OFFICE PROVIDING ADULT PROTECTIVE SERVICES PURSUANT TO SECTION  
11     FOUR HUNDRED SEVENTY-THREE OF THE SOCIAL SERVICES LAW;

12        (B) "FINANCIAL EXPLOITATION" SHALL MEAN IMPROPER USE OF AN ADULT'S  
13     FUNDS, PROPERTY OR RESOURCES BY ANOTHER INDIVIDUAL, INCLUDING BUT NOT  
14     LIMITED TO, FRAUD, FALSE PRETENSES, EMBEZZLEMENT, CONSPIRACY, FORGERY,  
15     FALSIFYING RECORDS, COERCED PROPERTY TRANSFERS, OR DENIAL OF ACCESS TO  
16     ASSETS; AND

17        (C) "FINANCIAL INSTITUTION" SHALL MEAN BANKS, TRUST COMPANIES, PRIVATE  
18     BANKERS, SAVINGS BANKS, LICENSED LENDERS, SAVINGS AND LOAN ASSOCIATIONS,  
19     CREDIT UNIONS, INVESTMENT COMPANIES, MUTUAL TRUST INVESTMENT COMPANIES,  
20     AND BANKING ORGANIZATIONS AS DEFINED IN SECTION TWO OF THIS CHAPTER THAT  
21     ARE LICENSED BY THE SUPERINTENDENT.

22        (D) "ACCOUNT HOLDER" SHALL MEAN AN INDIVIDUAL WHO HAS AN INDIVIDUAL OR  
23     JOINT ACCOUNT WITH A FINANCIAL INSTITUTION.

24     2. THE DEPARTMENT SHALL DEVELOP A PROGRAM WHEREBY A FINANCIAL INSTITU-  
25     TION SHALL BE REQUIRED TO REPORT SUSPECTED FINANCIAL EXPLOITATION OF A  
26     PARTICIPATING ACCOUNT HOLDER TO THE APPROPRIATE ADULT PROTECTIVE  
27     SERVICES AGENCY AND APPROPRIATE LAW ENFORCEMENT. THIS PROGRAM SHALL  
28     OPERATE AS FOLLOWS:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (A) PARTICIPATION IN THIS PROGRAM SHALL BE OFFERED TO ALL ACCOUNT  
2 HOLDERS;

3 (B) SUCH PARTICIPATION SHALL BE VOLUNTARY FOR ACCOUNT HOLDERS;

4 (C) AN ACCOUNT HOLDER MAY REVOKE HIS OR HER PARTICIPATION AT ANY TIME  
5 IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT;

6 (D) IF AN OFFICER, DIRECTOR, AGENT OR EMPLOYEE OF A FINANCIAL INSTITU-  
7 TION, ACTING IN HIS OR HER OFFICIAL CAPACITY, HAS CAUSE TO SUSPECT  
8 FINANCIAL EXPLOITATION OF AN ACCOUNT HOLDER PARTICIPATING IN SUCH  
9 PROGRAM, SUCH OFFICER, DIRECTOR, AGENT OR EMPLOYEE SHALL REPORT, OR  
10 CAUSE TO BE REPORTED, SUCH SUSPECTED FINANCIAL EXPLOITATION IN ACCORD-  
11 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DEPARTMENT ON A FORM  
12 PRESCRIBED BY THE DEPARTMENT;

13 (E) THE DEPARTMENT SHALL DEVELOP A FORM FOR USE BY FINANCIAL INSTI-  
14 TUTIONS THAT AN ACCOUNT HOLDER MAY COMPLETE IN ORDER TO PARTICIPATE IN  
15 THIS PROGRAM AND A FORM BY WHICH AN ACCOUNT HOLDER MAY REVOKE HIS OR HER  
16 PARTICIPATION;

17 (F) THE ORIGINAL FORM SHALL BE KEPT ON FILE BY THE FINANCIAL INSTITU-  
18 TION AS LONG AS THE ACCOUNT HOLDER MAINTAINS AN ACCOUNT WITH SUCH FINAN-  
19 CIAL INSTITUTION AND A COPY SHALL BE FORWARDED TO THE DEPARTMENT AND THE  
20 ACCOUNT HOLDER; AND

21 (G) THE DEPARTMENT SHALL PROMULGATE ANY RULES AND REGULATIONS NECES-  
22 SARY TO EFFECTUATE THE PROVISIONS OF THIS SECTION INCLUDING, BUT NOT  
23 LIMITED TO:

24 (1) GUIDELINES FOR HOW AND TO WHOM SUSPECTED FINANCIAL EXPLOITATION  
25 SHALL BE REPORTED, WHETHER TO ADULT PROTECTIVE SERVICES AND/OR APPROPRI-  
26 ATE LAW ENFORCEMENT; AND

27 (2) IDENTIFICATION OF INDICATORS THAT MAY BE USED TO DETERMINE A  
28 REASONABLE BASIS FOR REPORTING SUSPECTED FINANCIAL EXPLOITATION.

29 3. AN ACCOUNT HOLDER WHO HAS OPTED TO PARTICIPATE IN THIS PROGRAM AND  
30 WHOSE PARTICIPATION HAS NOT BEEN REVOKED SHALL BE DEEMED TO HAVE GIVEN  
31 PERMISSION FOR REPORTS OF SUSPECTED FINANCIAL EXPLOITATION TO BE  
32 REFERRED TO APPROPRIATE LAW ENFORCEMENT, PROVIDING THAT SUCH REPORTS ARE  
33 MADE IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY THE DEPART-  
34 MENT.

35 4. IF AN ACCOUNT HOLDER HAS REVOKED PARTICIPATION IN THE PROGRAM, SUCH  
36 REVOCATION SHALL BE EFFECTIVE UPON RECEIPT OF SUCH REVOCATION BY THE  
37 FINANCIAL INSTITUTION. THEREAFTER, NO REPORT OF SUSPECTED FINANCIAL  
38 EXPLOITATION SHALL BE DEEMED REQUIRED BY THIS SECTION UNLESS SUCH  
39 ACCOUNT HOLDER CHOOSES TO PARTICIPATE IN THE PROGRAM AGAIN AT A LATER  
40 POINT IN TIME.

41 5. A FINANCIAL INSTITUTION LOCATED OR DOING BUSINESS IN THIS STATE OR  
42 AN EMPLOYEE THEREOF WHO, ACTING REASONABLY AND IN GOOD FAITH IN ACCORD-  
43 ANCE WITH THIS SECTION SHALL HAVE IMMUNITY FROM ANY CIVIL LIABILITY THAT  
44 MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

45 6. ANY INFORMATION OR DOCUMENTATION SUBMITTED PURSUANT TO THIS SECTION  
46 SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFI-  
47 CERS LAW.

48 7. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR NEGATE THE  
49 DUTIES OF ANY FINANCIAL INSTITUTION OR ANY OFFICER, DIRECTOR, AGENT, OR  
50 EMPLOYEE THEREOF ESTABLISHED BY ANY OTHER PROVISION OF LAW.

51 S 2. This act shall take effect on the sixtieth day after it shall  
52 have become a law.