

7345--B

2013-2014 Regular Sessions

I N A S S E M B L Y

May 13, 2013

Introduced by M. of A. ROBINSON, MILLMAN, WEPRIN, PEOPLES-STOKES, CAMARA, BARRON, MOSLEY, OTIS, BARRETT, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. ARROYO, SIMANOWITZ -- read once and referred to the Committee on Aging -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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,

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

LBD10951-03-3

1 AND BANKING ORGANIZATIONS AS DEFINED IN SECTION TWO OF THIS CHAPTER THAT
2 ARE LICENSED BY THE SUPERINTENDENT.

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

5 2. THE DEPARTMENT SHALL DEVELOP A PROGRAM WHEREBY A FINANCIAL INSTITU-
6 TION SHALL BE REQUIRED TO REPORT SUSPECTED FINANCIAL EXPLOITATION OF A
7 PARTICIPATING ACCOUNT HOLDER TO THE APPROPRIATE ADULT PROTECTIVE
8 SERVICES AGENCY AND APPROPRIATE LAW ENFORCEMENT. THIS PROGRAM SHALL
9 OPERATE AS FOLLOWS:

10 (A) PARTICIPATION IN THIS PROGRAM SHALL BE OFFERED TO ALL ACCOUNT
11 HOLDERS;

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

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

15 (D) IF AN OFFICER, DIRECTOR, AGENT OR EMPLOYEE OF A FINANCIAL INSTITU-
16 TION, ACTING IN HIS OR HER OFFICIAL CAPACITY, HAS CAUSE TO SUSPECT
17 FINANCIAL EXPLOITATION OF AN ACCOUNT HOLDER PARTICIPATING IN SUCH
18 PROGRAM, SUCH OFFICER, DIRECTOR, AGENT OR EMPLOYEE SHALL REPORT, OR
19 CAUSE TO BE REPORTED, SUCH SUSPECTED FINANCIAL EXPLOITATION IN ACCORD-
20 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DEPARTMENT ON A FORM
21 PRESCRIBED BY THE DEPARTMENT;

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

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

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

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

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

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

44 4. IF AN ACCOUNT HOLDER HAS REVOKED PARTICIPATION IN THE PROGRAM, SUCH
45 REVOCATION SHALL BE EFFECTIVE UPON RECEIPT OF SUCH REVOCATION BY THE
46 FINANCIAL INSTITUTION. THEREAFTER, NO REPORT OF SUSPECTED FINANCIAL
47 EXPLOITATION SHALL BE DEEMED REQUIRED BY THIS SECTION UNLESS SUCH
48 ACCOUNT HOLDER CHOOSES TO PARTICIPATE IN THE PROGRAM AGAIN AT A LATER
49 POINT IN TIME.

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

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

1 7. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR NEGATE THE
2 DUTIES OF ANY FINANCIAL INSTITUTION OR ANY OFFICER, DIRECTOR, AGENT, OR
3 EMPLOYEE THEREOF ESTABLISHED BY ANY OTHER PROVISION OF LAW.
4 S 2. This act shall take effect on the sixtieth day after it shall
5 have become a law.