S T A T E O F N E W Y O R K

2162

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

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

AN ACT to amend the banking law and the elder law, in relation to financial exploitation; and to amend the state finance law, in relation to establishing the financial exploitation, outreach, education and training fund

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

Section 1. The banking law is amended by adding a new section 9-v to read as follows:

S 9-V. REPORTING OF SUSPECTED FINANCIAL EXPLOITATION. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "FINANCIAL INSTITUTION" SHALL MEAN ANY OF THE FOLLOWING:

(1) A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 3(C) OF THE FEDERAL DEPOSIT INSURANCE ACT (12 U.S.C. SEC. 1813(C)).

(2) AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN SECTION 3(U) OF THE FEDERAL DEPOSIT INSURANCE ACT (12 U.S.C. SEC. 1813(U)).

(3) A FEDERAL CREDIT UNION OR STATE CREDIT UNION, AS DEFINED IN SECTION 101 OF THE FEDERAL CREDIT UNION ACT (12 U.S.C. SEC. 1752), INCLUDING, BUT NOT LIMITED TO, AN INSTITUTION-AFFILIATED PARTY OF A CREDIT UNION, AS DEFINED IN SECTION 206(R) OF THE FEDERAL CREDIT UNION ACT (12 U.S.C. SEC. 1786(R)).

(B) "ELDERLY PERSON" SHALL MEAN A PERSON SIXTY YEARS OF AGE OR OLDER.

(C) "FINANCIAL EXPLOITATION" SHALL MEAN IMPROPER USE OF AN ELDERLY PERSON'S FUNDS, PROPERTY OR RESOURCES BY ANOTHER INDIVIDUAL, INCLUDING BUT NOT LIMITED TO FRAUD, FALSE PRETENSES, MISREPRESENTATION, EMBEZZLEMENT, CONSPIRACY, FORGERY, FALSIFYING RECORDS, COERCED PROPERTY TRANSFERS OR DENIAL OF ACCESS TO ASSETS.

2. ANY CERTIFIED PUBLIC ACCOUNTANT OR ATTORNEY LICENSED IN THIS STATE, ANY PREPARER OF TAXES OPERATING IN THIS STATE, AND ANY OFFICER OR EMPLOYEE OF A FINANCIAL INSTITUTION LOCATED WITHIN THIS STATE, WHO

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

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REVIEWS OR APPROVES AN ELDERLY PERSON'S FINANCIAL DOCUMENTS, RECORDS OR TRANSACTIONS, IN CONNECTION WITH PROVIDING FINANCIAL AND/OR LEGAL SERVICES TO OR ON BEHALF OF AN ELDERLY PERSON SHALL BE REQUIRED TO REPORT IN ACCORDANCE WITH THIS SECTION WHEN SUCH INDIVIDUAL, WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR PROFESSIONAL PRACTICE, HAS REASONABLE CAUSE TO BELIEVE THAT SUCH ELDERLY PERSON HAS BEEN OR IS BEING SUBJECTED TO FINANCIAL EXPLOITATION. A BANK TELLER SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS SECTION, PROVIDED THAT BANK TELLERS RECEIVE TRAINING APPROVED BY THE OFFICE FOR THE AGING ON IDENTIFYING SCAMS AND OTHER FORMS OF FINANCIAL EXPLOITATION.

3. IN ADDITION TO THOSE PERSONS REQUIRED TO REPORT SUSPECTED FINANCIAL EXPLOITATION UNDER THIS SECTION, ANY OTHER PERSON MAY MAKE SUCH A REPORT IF HE OR SHE HAS REASONABLE CAUSE TO BELIEVE THAT AN ELDERLY PERSON HAS BEEN OR IS BEING SUBJECTED TO FINANCIAL EXPLOITATION.

4. REPORTS OF SUSPECTED FINANCIAL EXPLOITATION UNDER THIS SECTION SHALL BE MADE IMMEDIATELY BY TELEPHONE OR AS SOON AS PRACTICABLY POSSIBLE, AND BY WRITTEN REPORT SENT WITHIN TWO WORKING DAYS TO THE ADULT PROTECTIVE SERVICES UNIT OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES.

5. AN ALLEGATION BY AN ELDERLY PERSON, OR ANY OTHER PERSON, THAT FINANCIAL EXPLOITATION HAS OCCURRED IS SUFFICIENT TO TRIGGER THE REPORTING REQUIREMENT IN SUBDIVISION TWO OF THIS SECTION.

6. ANY PERSON WHO IN GOOD FAITH MAKES A REPORT UNDER THIS SECTION SHALL HAVE IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, FOR HAVING MADE SUCH A REPORT. FOR THE PURPOSE OF ANY PROCEEDING, CIVIL OR CRIMINAL, THE GOOD FAITH OF ANY PERSON REQUIRED TO REPORT INSTANCES OF FINANCIAL EXPLOITATION UNDER SUBDIVISION TWO OF THIS SECTION SHALL BE PRESUMED.

7. IF, AFTER A PROCEEDING WITH NOTICE AND A HEARING, THE SUPERINTENDENT DETERMINES THAT ANY PERSON REQUIRED BY THIS SECTION TO REPORT AN INSTANCE OF SUSPECTED FINANCIAL EXPLOITATION HAS WILLFULLY FAILED TO REPORT SUCH INSTANCE, SUCH PERSON SHALL BE DEEMED TO HAVE VIOLATED THIS SECTION AND SHALL BE SUBJECT TO A PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER VIOLATION.

S 2. Section 202 of the elder law is amended by adding a new subdivision 16 to read as follows:

16. TO CONDUCT AN OUTREACH, EDUCATION AND TRAINING PROGRAM FOR FINANCIAL INSTITUTIONS AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION NINE-V OF THE BANKING LAW.

S 3. The elder law is amended by adding a new section 219-a to read as follows:

S 219-A. FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERM "DESIGNATED AGENCY" SHALL HAVE THE MEANING ASCRIBED TO IT UNDER SECTION TWO HUNDRED FOURTEEN OF THIS TITLE.

2. THE DIRECTOR, WITHIN THE AMOUNTS APPROPRIATED THEREFOR, SHALL, IN CONJUNCTION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE BANKING DEPARTMENT, ESTABLISH A FINANCIAL OUTREACH, EDUCATION AND TRAINING PROGRAM, HEREINAFTER REFERRED TO IN THIS SECTION AS "THE PROGRAM," FOR THE PURPOSE OF PROVIDING AN EDUCATION, OUTREACH AND TRAINING PROGRAM TO CERTIFIED PUBLIC ACCOUNTANTS LICENSED IN THIS STATE, ATTORNEYS LICENSED IN THIS STATE, ANY PREPARER OF TAXES OPERATING IN THIS STATE, AND TO FINANCIAL INSTITUTIONS AS DEFINED IN SECTION NINE-V OF THE BANKING LAW LOCATED WITHIN THIS STATE. THE OUTREACH, EDUCATION AND TRAINING PROGRAM SHALL BE A VOLUNTARY PROGRAM. THE DIRECTOR, IN CONJUNCTION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT OF FINAN-

CIAL SERVICES, SHALL COORDINATE ACTIVITIES TO IDENTIFY AND PROVIDE TRAINING TO THE INSTITUTIONS AND INDIVIDUALS DESCRIBED IN THIS SECTION.

3. (A) AS PART OF THE PROGRAM, THE DIRECTOR MAY AWARD GRANTS TO QUALIFIED DESIGNATED AGENCIES TO ESTABLISH LOCAL ELDERLY EXPLOITATION OUTREACH, EDUCATION AND TRAINING PROGRAMS. QUALIFIED DESIGNATED AGENCIES SHALL WORK COLLABORATIVELY WITH SUCH INSTITUTIONS AND INDIVIDUALS, AND THEIR REPRESENTATIVE ASSOCIATIONS.

(B) IN MAKING SUCH GRANTS, THE DIRECTOR SHALL CONSIDER:

(1) THE MANNER IN WHICH THE DESIGNATED AGENCY PROPOSES TO PROVIDE SUCH EDUCATION, OUTREACH AND TRAINING;

(2) THE CAPACITY OF THE DESIGNATED AGENCY TO COORDINATE ITS SERVICES WITH BANKING, HUMAN SERVICE AND LAW ENFORCEMENT AND PUBLIC AGENCIES WHICH PROVIDE SERVICES OR ASSISTANCE TO THE ELDERLY, INCLUDING THE LOCAL DEPARTMENT OF SOCIAL SERVICES ADULT PROTECTIVE SERVICES UNIT; AND

(3) ANY OTHER CRITERIA DETERMINED BY THE DIRECTOR TO BE APPROPRIATE.

4. THE PROGRAM SHALL, AT A MINIMUM, CONSIST OF THE FOLLOWING ELEMENTS WHICH SHALL BE PROVIDED BY THE OFFICE FOR THE AGING:

(A) EDUCATIONAL AND INFORMATIONAL MATERIALS IN PRINT, AUDIO, VISUAL, ELECTRONIC OR OTHER MEDIA;

(B) PUBLIC SERVICE ANNOUNCEMENTS, ADVERTISEMENTS, MEDIA CAMPAIGNS, WORKSHOPS AND MASS MAILINGS;

(C) CONFERENCES OR PRESENTATIONS DESIGNED TO PROVIDE INFORMATION TO THOSE INDIVIDUALS IDENTIFIED IN SUBDIVISION TWO OF SECTION NINE-V OF THE BANKING LAW; AND

(D) INSTRUCTIONS ON HOW TO REPORT KNOWN OR SUSPECTED INCIDENTS OF FINANCIAL EXPLOITATION OF THE ELDERLY, INCLUDING THE APPROPRIATE TELEPHONE NUMBERS TO CALL AND THE TYPES OF INFORMATION THAT WOULD ASSIST THE OFFICE WITH ITS INVESTIGATION OF THE REPORT.

5. THE DIRECTOR SHALL CONVENE AN ADVISORY COMMITTEE MADE UP OF AT LEAST TEN BUT NO MORE THAN TWENTY MEMBERS TO ADVISE THE DIRECTOR AND MAKE RECOMMENDATIONS ON THE ASPECTS OF DEVELOPING AND IMPLEMENTING THE PROGRAM. MEMBERS OF THE ADVISORY COMMITTEE SHALL INCLUDE BUT NOT BE LIMITED TO: AT LEAST TWO REPRESENTATIVES FROM STATEWIDE SENIOR ADVOCACY ORGANIZATIONS, AT LEAST ONE REPRESENTATIVE REPRESENTING A NON-PROFIT SENIOR ORGANIZATION WHICH OPERATES AN ELDER ABUSE PREVENTION PROGRAM, AT LEAST ONE ATTORNEY WHOSE PRACTICE CONCENTRATES IN ELDER LAW OR AN INDIVIDUAL ACTING ON BEHALF OF THE ELDER LAW SECTION OF THE NEW YORK STATE BAR ASSOCIATION, AT LEAST ONE BANKER OR A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING BANKERS, AT LEAST ONE CERTIFIED PUBLIC ACCOUNTANT OR A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING CERTIFIED PUBLIC ACCOUNTANTS, AT LEAST TWO MEMBERS REPRESENTING PROTECTIVE SERVICES FOR ADULTS, AND AT LEAST TWO LAW ENFORCEMENT REPRESENTATIVES.

S 4. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND.

1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SUPERINTENDENT OF BANKS A SPECIAL REVENUE FUND TO BE KNOWN AS THE "FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND".

2. THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND SHALL CONSIST OF ALL MONEYS RECEIVED BY THE STATE UNDER SECTION NINE-V OF THE BANKING LAW AND ALL OTHER FEES, FINES, GRANTS, BEQUESTS OR OTHER MONIES CREDITED, APPROPRIATED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. THE MONEYS OF THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND SHALL BE DISBURSED BY THE COMPTROLLER TO THE STATE OFFICE

FOR THE AGING FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF SECTIONS TWO HUNDRED NINETEEN AND TWO HUNDRED NINETEEN-A OF THE ELDER LAW.

S 5. This act shall take effect immediately; provided, however, that subdivisions 2, 3, 4, 5, 6 and 7 of section 9-v of the banking law, as added by section one of this act, shall take effect on the two hundred seventieth day after this act shall have become a law.