

S. 2806--A

A. 4037--A

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 29, 2015

IN SENATE -- Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ROBINSON, BARRETT, OTIS, PEOPLES-STOKES, MOSLEY, ARROYO, FARRELL, PERRY, SEPULVEDA, SIMANOWITZ, LINARES, BARRON -- read once and referred to the Committee on Aging -- ordered to a third reading -- committed to the Committee on Aging in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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;

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

LBD00937-02-6

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

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

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

2. THE DEPARTMENT SHALL DEVELOP A PROGRAM WHEREBY A FINANCIAL INSTITUTION SHALL BE REQUIRED TO REPORT SUSPECTED FINANCIAL EXPLOITATION OF A PARTICIPATING ACCOUNT HOLDER TO THE APPROPRIATE ADULT PROTECTIVE SERVICES AGENCY AND APPROPRIATE LAW ENFORCEMENT. THIS PROGRAM SHALL OPERATE AS FOLLOWS:

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

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

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

(D) IF AN OFFICER, DIRECTOR, AGENT OR EMPLOYEE OF A FINANCIAL INSTITUTION, ACTING IN HIS OR HER OFFICIAL CAPACITY, HAS CAUSE TO SUSPECT FINANCIAL EXPLOITATION OF AN ACCOUNT HOLDER PARTICIPATING IN SUCH PROGRAM, SUCH OFFICER, DIRECTOR, AGENT OR EMPLOYEE SHALL REPORT, OR CAUSE TO BE REPORTED, SUCH SUSPECTED FINANCIAL EXPLOITATION IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT;

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

(F) THE ORIGINAL FORM SHALL BE KEPT ON FILE BY THE FINANCIAL INSTITUTION AS LONG AS THE ACCOUNT HOLDER MAINTAINS AN ACCOUNT WITH SUCH FINANCIAL INSTITUTION AND A COPY SHALL BE FORWARDED TO THE DEPARTMENT AND THE ACCOUNT HOLDER; AND

(G) THE SUPERINTENDENT, IN CONSULTATION WITH THE DIRECTOR OF THE OFFICE FOR THE AGING, THE ATTORNEY GENERAL, REPRESENTATIVES OF THE FINANCIAL SERVICES INDUSTRY, LAW ENFORCEMENT, SENIOR GROUPS, SENIOR CENTERS, INDEPENDENT LIVING CENTERS, DISABILITY GROUPS, THE NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, AND DISTRICT ATTORNEYS, SHALL DEVELOP:

(1) GUIDELINES FOR WHEN, HOW AND TO WHOM SUSPECTED FINANCIAL EXPLOITATION SHOULD BE REPORTED, WHETHER TO ADULT PROTECTIVE SERVICES AND/OR APPROPRIATE LAW ENFORCEMENT;

(2) IDENTIFICATION OF WARNING SIGNS AND EVIDENCE THAT WOULD BE ACCEPTABLE INDICATORS OF FINANCIAL EXPLOITATION AND THAT MAY BE USED TO DETERMINE A REASONABLE BASIS FOR REPORTING SUSPECTED FINANCIAL EXPLOITATION;

(3) INFORMATION THAT SHOULD BE INCLUDED IN A REPORT OF SUSPECTED FINANCIAL ABUSE; AND

(4) THE APPLICABLE LAWS, RULES AND REGULATIONS THAT MUST BE FOLLOWED WHILE REPORTING SUSPECTED FINANCIAL ABUSE.

3. THE SUPERINTENDENT, IN CONSULTATION WITH THE DIRECTOR OF THE OFFICE FOR THE AGING, THE ATTORNEY GENERAL, REPRESENTATIVES OF THE FINANCIAL SERVICES INDUSTRY, LAW ENFORCEMENT, SENIOR GROUPS, SENIOR CENTERS, INDE-

PENDENT LIVING CENTERS, DISABILITY GROUPS, THE NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, AND DISTRICT ATTORNEYS, SHALL DEVELOP;

(A) TRAINING FOR BANK EMPLOYEES CONCERNING THE GUIDELINES OF DEVELOPED PURSUANT TO SUBDIVISION TWO OF THIS SECTION THAT SHALL INCLUDE DISABILITY LITERACY TRAINING; AND

(B) A BROCHURE EDUCATING BANK CUSTOMERS REGARDING THE REPORTING OF FINANCIAL EXPLOITATION AND HOW TO REPORT THAT THEY ARE BEING EXPLOITED.

4. AN ACCOUNT HOLDER WHO HAS OPTED TO PARTICIPATE IN THIS PROGRAM AND WHOSE PARTICIPATION HAS NOT BEEN REVOKED SHALL BE DEEMED TO HAVE GIVEN PERMISSION FOR REPORTS OF SUSPECTED FINANCIAL EXPLOITATION TO BE REFERRED TO APPROPRIATE LAW ENFORCEMENT, PROVIDING THAT SUCH REPORTS ARE MADE IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY THE DEPARTMENT.

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

6. A FINANCIAL INSTITUTION LOCATED OR DOING BUSINESS IN THIS STATE OR AN EMPLOYEE THEREOF WHO ACTS REASONABLY AND IN GOOD FAITH IN ACCORDANCE WITH THIS SECTION SHALL HAVE IMMUNITY FROM ANY CIVIL LIABILITY THAT MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

7. ANY INFORMATION OR DOCUMENTATION SUBMITTED PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

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

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