STATE OF NEW YORK

6736

2017-2018 Regular Sessions

IN SENATE

June 15, 2017

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

AN ACT to amend the social services law and the banking law, in relation to the role of banking institutions in protecting vulnerable elderly persons from financial exploitation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 473 of the social services law is amended by adding a new subdivision 9 to read as follows:

9. (a) When used in this subdivision: (i) "banking institution" means any bank, trust company, savings bank, savings and loan association, or credit union, which is chartered, organized, or licensed under the laws of this state, and in the course of business takes deposit accounts in this state, but shall not include a private banker, a safe deposit company, or an investment company.

(ii) "vulnerable elderly person" shall have the same meaning as section 260.31 of the penal law.

(iii) "financial exploitation" means (A) a series of improper takings, withholdings, appropriations, or uses of a vulnerable adult's money, assets, or property or (B) a series of acts or omissions to: (1) obtain control, through deception, intimidation, or malicious influence, a vulnerable adult's money, assets, or property or (2) convert the vulnerable adult's money, assets, or property.

(iv) "qualified individual" means an individual associated with a banking institution who serves in a supervisory, compliance, or legal capacity as part of the individual's job.

(b) If a banking institution, social services official, or law enforcement agency reasonably believes that financial exploitation of a vulnerable elderly person has occurred or may occur again, the banking institution may, but shall not be required to, refuse or delay any

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

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single transaction requiring the disbursal of moneys from the account of:

(i) a vulnerable elderly person; or

(ii) which a vulnerable elderly person is a beneficiary.

(c) A banking institution may also refuse to disburse or delay moneys pursuant to this subdivision if a social services official, or law enforcement agency provides information to such institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable elderly person has occurred or may occur again.

(d) A banking institution shall not be required to refuse to disburse or delay funds pursuant to this section. Such a refusal or delay shall be in the banking institution's discretion, based on the information available to such institution.

(e) Any banking institution that refuses to disburse moneys or delays the disbursement of moneys pursuant to this subdivision shall:

(i) make a reasonable effort to provide notice, orally or in writing, to all parties authorized to transact business on the account from which a disbursement was refused and/or delayed within five business days of such refusal or delay; and

(ii) immediately, but no later than one business day after a refusal or delay was placed on a transaction, report the incident to the social services official responsible for administering adult protective services or enhanced multi-disciplinary teams pursuant to this article for the affected vulnerable adult. Such report shall include the reason for refusing and/or delaying a transaction and the banking institution's basis for refusing and/or delaying a single transaction. Such report shall also contain any facts that the bank deems relevant to establishing that financial exploitation of a vulnerable elderly person may have occurred, may have been attempted, or is being attempted; and

(iii) at the request of the social services official responsible for administering adult protective services pursuant to this article for the affected vulnerable elderly person or a law enforcement agency, provide all information and documents that relate to the transaction refusal or delay within three business days of the request for information or documentation.

(f) The delay of or refusal to disburse moneys pursuant to this subdivision shall terminate upon the earlier of:

(i) the time at which the banking institution is satisfied that the disbursement will not result in the financial exploitation of a vulnerable elderly person;

(ii) the issuance of an order by a court of competent jurisdiction, directing the disbursal of the moneys; or

(iii) ten business days after the day on which the transaction refusal or delay is applied by the banking institution.

(g) Notwithstanding any other provisions found in this article, the banking institution shall make funds available that were previously held or delayed because of suspicion of financial exploitation of a vulnerable elderly person, if such funds are necessary to meet ongoing obligations such as, but not limited to, housing, medical care, or other emergency expenses as determined by a social services official or law enforcement official. Transactions related to the maintenance of a household such as rent, mortgage payments, utilities, and medical expenses shall not be delayed or refused by a banking institution.

(h) If a banking institution does engage in the practice of delaying or refusing transactions based on the financial exploitation of a vulnerable elderly person, such banking institution must designate one

or more qualified individuals with the authority to refuse or delay such transactions. Such designee shall make a record of such action in compliance with subparagraph (ii) of paragraph (e) of this subdivision.

(i) A banking institution or an employee of such an institution shall be immune from criminal, civil or administrative liability for delaying the disbursement of moneys, refusing to disburse moneys, or disbursing moneys pursuant to this subdivision, and for actions taken in furtherance of that determination, including the making of a report or the providing of access to or copies of relevant records to a social services official or law enforcement agency, if such determinations and actions were made in good faith and in accordance with the provisions of this subdivision.

§ 2. Section 4 of the banking law is amended by adding a new subdivision 4 to read as follows:

4. A banking institution or an employee of such an institution shall be immune from criminal, civil or administrative liability for refusing to disburse moneys or disbursing moneys pursuant to subdivision nine of section four hundred seventy-three of the social services law, and for actions taken in furtherance of a determination made pursuant to such section, including making a report or providing access to or copies of relevant records to a social services official or law enforcement agency, provided that such determinations and actions were made in good faith and in accordance with subdivision nine of section four hundred seventy-three of the social services law. For purposes of this subdivision, the term "banking institution" shall mean any bank, trust company, savings bank, savings and loan association, credit union, or branch of a foreign banking corporation, that is chartered, organized, or licensed under the laws of this state or any other state or the United States, and in the course of business takes deposit accounts in this state, but shall not include a private banker, a safe deposit company, or an investment company.

§ 3. The banking law is amended by adding a new section 4-d to read as follows:

§ 4-d. Training and education. 1. The superintendent, in consultation with the director of the office for the aging, the director of the bureau of adult protective services within the office of children and family services, the commissioner of the office of people with developmental disabilities, and the director of the office of victim services, shall develop a financial exploitation training and education program for banking institutions as defined in section four hundred seventy-three of the social services law. The superintendent shall also consult with elder advocacy groups and disability rights organizations that possess specialized knowledge in the prevention and/or identification of financial exploitation, advocacy groups dealing with the effects of aging on cognitive abilities, and advocacy groups that possess specialized knowledge in developmental disabilities, diseases and other conditions that may impair mental and cognitive function.

2. Participation in the financial exploitation training and education program shall be voluntary by the banking institution and the superintendent shall not require, by regulation or otherwise, that any director, officer, employee or any other person affiliated with a banking institution participate in or attend such training and education program.

3. In developing the financial exploitation training and education program for covered banking institutions, the superintendent shall consult with and shall include instructors from organizations that

provide services to vulnerable adults and may have experience in identifying financial exploitation and from organizations that provide services to individuals with developmental disabilities.

4. It shall be the purpose of the financial exploitation training and education program to provide information, training and education on how to identify, help prevent and report the financial exploitation of a vulnerable elderly person.

5. The superintendent shall make the materials and instruction of the financial exploitation training and education program available to all banking institutions across the state at no cost, and shall further make such available via both live instruction platforms as well as through online instructional presentations accessible through the websites of the department, the office for the aging, the office of children and family services, the office of people with developmental disabilities, and the office of victim services.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.