

# 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:

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

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

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

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

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

20 (b) If a banking institution, social services official, or law  
21 enforcement agency reasonably believes that financial exploitation of a  
22 vulnerable elderly person has occurred or may occur again, the banking  
23 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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1 single transaction requiring the disbursal of moneys from the account  
2 of:

3 (i) a vulnerable elderly person; or

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

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

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

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

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

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

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

36 (f) The delay of or refusal to disburse moneys pursuant to this subdi-  
37 vision shall terminate upon the earlier of:

38 (i) the time at which the banking institution is satisfied that the  
39 disbursement will not result in the financial exploitation of a vulner-  
40 able elderly person;

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

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

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

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

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

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

13 § 2. Section 4 of the banking law is amended by adding a new subdivi-  
14 sion 4 to read as follows:

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

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

34 § 4-d. Training and education. 1. The superintendent, in consultation  
35 with the director of the office for the aging, the director of the  
36 bureau of adult protective services within the office of children and  
37 family services, the commissioner of the office of people with develop-  
38 mental disabilities, and the director of the office of victim services,  
39 shall develop a financial exploitation training and education program  
40 for banking institutions as defined in section four hundred seventy-  
41 three of the social services law. The superintendent shall also consult  
42 with elder advocacy groups and disability rights organizations that  
43 possess specialized knowledge in the prevention and/or identification of  
44 financial exploitation, advocacy groups dealing with the effects of  
45 aging on cognitive abilities, and advocacy groups that possess special-  
46 ized knowledge in developmental disabilities, diseases and other condi-  
47 tions that may impair mental and cognitive function.

48 2. Participation in the financial exploitation training and education  
49 program shall be voluntary by the banking institution and the super-  
50 intendent shall not require, by regulation or otherwise, that any direc-  
51 tor, officer, employee or any other person affiliated with a banking  
52 institution participate in or attend such training and education  
53 program.

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

1 provide services to vulnerable adults and may have experience in identi-  
2 fyng financial exploitation and from organizations that provide  
3 services to individuals with developmental disabilities.

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

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

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