

STATE OF NEW YORK

7515

2021-2022 Regular Sessions

IN SENATE

November 10, 2021

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

AN ACT to amend the general business law, in relation to requiring certain people to report suspected financial exploitation of an elderly, vulnerable elderly person, incompetent or physically disabled person, or incapacitated person

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

1 Section 1. The general business law is amended by adding a new section
2 349-g to read as follows:

3 § 349-g. Reporting of suspected financial exploitation. 1. As used in
4 this section, the following terms shall have the following meanings:

5 (a) "Financial institution" shall mean any of the following:

6 (i) a depository institution, as defined in section 3(c) of the feder-
7 al deposit insurance act (12 u.s.c. sec. 1813(c)) and a bank defined in
8 section two of the banking law;

9 (ii) an institution-affiliated party, as defined in section 3(u) of
10 the federal deposit insurance act (12 u.s.c. sec. 1813(u));

11 (iii) a federal credit union or state credit union, as defined in
12 section 101 of the federal credit union act (12 u.s.c. sec. 1752),
13 including, but not limited to, an institution-affiliated party of a
14 credit union, as defined in section 206(r) of the federal credit union
15 act (12 u.s.c. sec. 1786(r)).

16 (b) "Elderly person" shall mean a person seventy-five years of age or
17 older.

18 (c) "Incapacitated person" shall mean a person adjudicated as incapac-
19 itated under the mental hygiene law or deemed to be mentally or phys-
20 ically incapacitated by a physician.

21 (d) "Vulnerable elderly person" shall mean a person sixty years of
22 age or older who is suffering from a disease or infirmity associated
23 with advanced age and manifested by demonstrable physical, mental or

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

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1 emotional dysfunction to the extent that the person is incapable of
2 adequately providing for his or her own health or personal care.

3 (e) "Incompetent or physically disabled person" shall mean an individ-
4 ual who is unable to care for himself or herself because of physical
5 disability, mental disease or defect.

6 (f) "Financial exploitation" shall mean improper use of an elderly
7 person's, vulnerable elderly person's, incompetent or physically disa-
8 bled person's, or incapacitated person's funds, property or resources by
9 another individual, including but not limited to larceny, fraud, false
10 pretenses, misrepresentation, embezzlement, conspiracy, forgery, falsi-
11 fying records, coerced property transfers, changes of title or benefici-
12 aries on accounts or denial of access to assets and unusual and unex-
13 plained patterns of withdrawals from any account in a financial
14 institution or from automated teller machines in or maintained by a
15 financial institution.

16 2. Any certified public accountant or attorney licensed in this state,
17 any preparer of taxes operating in this state, and any officer or
18 employee of a financial institution located within this state, who
19 handles, reviews or approves an elderly person's, vulnerable elderly
20 person's, incompetent or physically disabled person's, or incapacitated
21 person's financial documents, records or monetary transactions, in
22 connection with providing financial and/or legal services to or on
23 behalf of an elderly person, vulnerable elderly person, incompetent or
24 physically disabled person, or incapacitated person shall be required to
25 report suspected financial exploitation when such individual, within the
26 scope of his or her employment or professional practice:

27 (a) has direct contact with an elderly person, vulnerable elderly
28 person, incompetent or physically disabled person, or incapacitated
29 person or reviews or approves an elderly person's, vulnerable elderly
30 person's, incompetent or physically disabled person's, or incapacitated
31 person's financial documents, records, or transactions in connection
32 with financial services provided by a fiduciary institution to or for
33 the elderly person, vulnerable elderly person, incompetent or physically
34 disabled person, or incapacitated person; and

35 (b) observes or obtains knowledge of behavior or unusual circumstances
36 or transactions that leads the employee to know or have reasonable cause
37 to suspect that the elderly person, vulnerable elderly person, incompe-
38 tent or physically disabled person, or incapacitated person is the
39 victim of financial abuse.

40 3. In addition to those persons required to report suspected financial
41 exploitation under subdivision two of this section, any court appointee
42 in a proceeding under the mental hygiene law or surrogate's court proce-
43 dure act and any other person shall make a report if he or she has
44 reasonable cause to believe that an elderly person, vulnerable elderly
45 person, incompetent or physically disabled person, or incapacitated
46 person has been or is being financially exploited.

47 4. (a) All owners, managers, directors, agents, employees of financial
48 institutions shall receive training approved by the office for the aging
49 on identifying scams and other forms of financial exploitation. Reports
50 of suspected financial exploitation under this section shall be made
51 immediately by the financial institution by telephone or as soon as
52 practicably possible within two working days to the adult protective
53 services unit of the local department of social services and the attor-
54 ney general's office and district attorney's office in the county in
55 which the accounts are located.

1 (b) If a financial institution has reasonable cause to believe that an
2 elderly person, vulnerable elderly person, incompetent or physically
3 disabled person, or incapacitated person is the victim of financial
4 exploitation, the financial institution shall have the right to refuse
5 to complete the transaction and place a hold on the account.

6 (c) A financial institution shall not be required to:

7 (i) investigate an allegation by an elderly person that financial
8 exploitation of the elderly person has occurred; or

9 (ii) report financial exploitation pursuant to this subdivision if the
10 same matter already has been reported pursuant to this subdivision.

11 (d) A report of financial exploitation made pursuant to this subdivi-
12 sion shall be confidential and the information contained in such report
13 may be disclosed only to a law enforcement agency, the office of the
14 attorney general, or the office of a state's attorney.

15 5. (a) In connection with an investigation of suspected financial
16 exploitation, notice of possible exploitation shall be given to:

17 (i) an adult protective services agency;

18 (ii) a long-term care ombudsman;

19 (iii) a law enforcement agency; and

20 (iv) the office of the attorney general or the office of a state's
21 attorney; or

22 (v) another person or office as authorized by the elderly person or
23 the legal guardian of the elderly person, vulnerable elderly person,
24 incompetent or physically disabled person, or incapacitated person.

25 (b) This subdivision shall not prohibit or limit the disclosure of
26 financial records otherwise permitted under state law.

27 6. An allegation by an elderly person, or any other person, that
28 financial exploitation has occurred shall be sufficient to trigger the
29 reporting requirement in subdivision two of this section.

30 7. Any person who in good faith makes a report of financial exploita-
31 tion, refuses to complete a transaction, or places a hold on an account
32 pursuant to this section shall have immunity from any liability, civil
33 or criminal, for having made such a report. For the purpose of any civil
34 or criminal proceeding, the good faith of any person required to report
35 instances of financial exploitation under subdivision two of this
36 section shall be presumed.

37 8. If, after a proceeding with notice and a hearing, it is determined
38 that any person required to report suspected financial exploitation
39 pursuant to this section has willfully failed to report such suspected
40 financial exploitation, such person shall be deemed to have violated
41 this section and shall be subject to a penalty not to exceed one thou-
42 sand dollars per violation.

43 § 2. This act shall take effect on the ninetieth day after it shall
44 have become a law. Effective immediately, the addition, amendment
45 and/or repeal of any rule or regulation necessary for the implementation
46 of this act on its effective date are authorized to be made and
47 completed on or before such effective date.