STATE OF NEW YORK

8145--A

2021-2022 Regular Sessions

IN ASSEMBLY

July 7, 2021

Introduced by M. of A. CUSICK, STERN, LUNSFORD, O'DONNELL, GALEF -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 349-g. 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:

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

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

(iii) 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 seventy-five years of age or older.

(c) "Incapacitated person" shall mean a person adjudicated as incapacitated under the mental hygiene law or deemed to be mentally or physically incapacitated by a physician.

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

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(d) "Vulnerable elderly person" shall mean a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

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

(f) "Financial exploitation" shall mean improper use of an elderly person's, vulnerable elderly person's, incompetent or physically disabled person's, or incapacitated person's funds, property or resources by another individual, including but not limited to larceny, fraud, false pretenses, misrepresentation, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, changes of title or beneficiaries on accounts or denial of access to assets and unusual and unexplained patterns of withdrawals from any account in a financial institution or from automated teller machines in or maintained by a financial institution.

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 handles, reviews or approves an elderly person's, vulnerable elderly person's, incompetent or physically disabled person's, or incapacitated person's financial documents, records or monetary transactions, in connection with providing financial and/or legal services to or on behalf of an elderly person, vulnerable elderly person, incompetent or physically disabled person, or incapacitated person shall be required to report suspected financial exploitation when such individual, within the scope of his or her employment or professional practice:

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

(b) observes or obtains knowledge of behavior or unusual circumstances or transactions that leads the employee to know or have reasonable cause to suspect that the elderly person, vulnerable elderly person, incompetent or physically disabled person, or incapacitated person is the victim of financial abuse.

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

4. (a) All owners, managers, directors, agents, employees of financial institutions shall receive training approved by the office for the aging on identifying scams and other forms of financial exploitation. Reports of suspected financial exploitation under this section shall be made immediately by the financial institution by telephone or as soon as practicably possible within two working days to the adult protective services unit of the local department of social services and the attor-

ney general's office and district attorney's office in the county in which the accounts are located.

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

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

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

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

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

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

(i) an adult protective services agency;

(ii) a long-term care ombudsman;

(iii) a law enforcement agency; and

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

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

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

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

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

8. If, after a proceeding with notice and a hearing, it is determined that any person required to report suspected financial exploitation pursuant to this section has willfully failed to report such suspected financial exploitation, 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.

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