

STATE OF NEW YORK

1071

2023-2024 Regular Sessions

IN SENATE

January 10, 2023

Introduced by Sens. BORRELLO, SANDERS -- read twice and ordered printed,
and when printed to be committed to the Committee on Consumer
Protection

AN ACT to amend the general business law, in relation to preventing the
financial exploitation of older and vulnerable adults

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

1 Section 1. The general business law is amended by adding a new section
2 359-eeee to read as follows:

3 § 359-eeee. Prevention of financial exploitation of elderly and
4 vulnerable adults. 1. For purposes of this section, the following terms
5 shall have the following meanings:

6 (a) "Eligible adult" means:

7 (i) a person sixty-five years of age or older; or

8 (ii) a person subject to adult protective services.

9 (b) "Financial exploitation" means:

10 (i) the wrongful or unauthorized taking, withholding, appropriation,
11 or use of money, assets or property of an eligible adult; or

12 (ii) any act or omission taken by a person, including through the use
13 of a power of attorney, guardianship, or conservatorship of an eligible
14 adult, to:

15 (1) obtain control, through deception, intimidation or undue influ-
16 ence, over such eligible adult's money, assets or property to deprive
17 such eligible adult of the ownership, use, benefit or possession of his
18 or her money, assets or property; or

19 (2) convert money, assets or property of such eligible adult to
20 deprive such eligible adult of the ownership, use, benefit or possession
21 of his or her money, assets or property.

22 (c) "Qualified individual" means any agent, representative or person
23 who serves in a supervisory, compliance, or legal capacity for a brok-
24 er-dealer or investment adviser.

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

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1 (d) "Investment advisor" shall have the same meaning as such term is
2 defined pursuant to paragraph (a) of subdivision one of section three
3 hundred fifty-nine-eee of this article.

4 (e) "Broker" and "dealer" shall have the same meaning as such terms
5 are defined pursuant to paragraphs (a) and (b) of subdivision one of
6 section three hundred fifty-nine-e of this article.

7 2. (a) If a qualified individual reasonably believes that financial
8 exploitation of an eligible adult may have occurred, may have been
9 attempted, or is being attempted, such qualified individual may promptly
10 notify adult protective services and the commissioner of the department
11 of financial services.

12 (b) A qualified individual that in good faith and exercising reason-
13 able care makes a disclosure of information pursuant to paragraph (a) of
14 this subdivision shall be immune from administrative or civil liability
15 that might otherwise arise from such disclosure or for any failure to
16 notify the customer of the disclosure.

17 3. (a) If a qualified individual reasonably believes that financial
18 exploitation of an eligible adult may have occurred, may have been
19 attempted, or is being attempted, such qualified individual may notify
20 any third-party previously designated by the eligible adult. Disclosure
21 shall not be made to any designated third-party that is suspected of
22 financial exploitation or other abuse of the eligible adult.

23 (b) A qualified individual that, in good faith and exercising reason-
24 able care, complies with paragraph (a) of this subdivision shall be
25 immune from any administrative or civil liability that might otherwise
26 arise from such disclosure.

27 4. (a) A broker-dealer or investment adviser may delay a disbursement
28 from an account of an eligible adult or an account on which an eligible
29 adult is a beneficiary if:

30 (i) the broker-dealer, investment adviser, or qualified individual
31 reasonably believes, after initiating an internal review of the
32 requested disbursement and the suspected financial exploitation, that
33 the requested disbursement may result in financial exploitation of an
34 eligible adult; and

35 (ii) the broker-dealer or investment adviser:

36 (1) immediately, but in no event more than two business days after the
37 requested disbursement, provides written notification of the delay and
38 the reason for the delay to all parties authorized to transact business
39 on the account, unless any such party is reasonably believed to have
40 engaged in suspected or attempted financial exploitation of the eligible
41 adult;

42 (2) immediately, but in no event more than two business days after the
43 requested disbursement, notifies the commissioner of the department of
44 financial services; and

45 (3) continues its internal review of the suspected or attempted finan-
46 cial exploitation of the eligible adult, as necessary, and reports the
47 investigation's results to the commissioner of the department of finan-
48 cial services within seven business days after the requested disburse-
49 ment.

50 (b) Any delay of a disbursement as authorized pursuant to this section
51 shall expire upon the sooner of:

52 (i) a determination by the broker-dealer or investment adviser that
53 the disbursement will not result in financial exploitation of the eligi-
54 ble adult; or

55 (ii) fifteen business days after the date on which the broker-dealer
56 or investment adviser first delayed disbursement of the funds, unless

1 the department of financial services requests that the broker-dealer or
2 investment adviser extend the delay, in which case the delay shall
3 expire no more than twenty-five business days after the date on which
4 the broker-dealer or investment adviser first delayed disbursement of
5 the funds unless sooner terminated by either the department of financial
6 services or an order of a court of competent jurisdiction.

7 (c) A court of competent jurisdiction may enter an order extending the
8 delay of the disbursement of funds or may order other protective relief
9 based on a petition of the commissioner of the department of financial
10 services, adult protective services, the broker-dealer or investment
11 adviser that initiated the delay pursuant to this subdivision, or another
12 interested party.

13 (d) A broker-dealer or investment adviser that, in good faith and
14 exercising reasonable care, complies with this subdivision shall be
15 immune from any administrative or civil liability that might otherwise
16 arise from such delay in a disbursement in accordance with this subdivi-
17 sion.

18 5. A broker-dealer or investment adviser shall provide access to or
19 copies of records that are relevant to the suspected or attempted finan-
20 cial exploitation of an eligible adult to agencies charged with adminis-
21 tering state adult protective services laws and to law enforcement,
22 either as part of a referral to an agency or to law enforcement, or upon
23 request of an agency or law enforcement pursuant to an investigation.
24 The records shall include historical records as well as records relating
25 to the most recent transaction or transactions that may comprise finan-
26 cial exploitation of an eligible adult. All records made available to
27 agencies under this section shall not be considered a public record.
28 Nothing in this subdivision shall limit or otherwise impede the authori-
29 ty of the commissioner of the department of financial services to access
30 or examine the books and records of broker-dealers and investment advis-
31 ers as otherwise provided by law.

32 § 2. This act shall take effect immediately.