

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 953**

Introduced by Kolterman, 24.

Read first time January 13, 2016

Committee: Judiciary

- 1    A BILL FOR AN ACT relating to financial institutions; to provide for the
- 2              protection of qualified adults as prescribed.
- 3    Be it enacted by the people of the State of Nebraska,

1       Section 1. The purpose of sections 1 to 9 of this act is to protect  
2 senior citizens from financial exploitation. Sections 1 to 9 of this act  
3 establishes a process whereby a financial advisor who suspects that  
4 attempted financial exploitation of a senior client may be occurring may  
5 notify his or her firm of the suspected financial exploitation. The firm,  
6 upon suspecting financial exploitation of a senior client, may  
7 temporarily refuse to execute the client's requested financial  
8 transaction and notify the appropriate agencies.

9       Sec. 2. For purposes of sections 1 to 9 of this act:

10       (1) Agencies means the Department of Insurance and the Department of  
11 Banking and Finance.

12       (2) Financial exploitation means the wrongful, unauthorized, or  
13 deceitful taking or attempted taking, withholding, appropriation, or use  
14 of money, assets, real property, or personal property of a qualified  
15 adult.

16       (3) Financial advisor means a person required to be licensed under  
17 the laws of this state to sell, solicit, or negotiate insurance; an  
18 individual who represents a broker-dealer in effecting or attempting to  
19 effect purchases or sales of securities; or an individual who is a  
20 representative of a state or federal-registered investment advisor.

21       (4) Firm means an insurance company, broker-dealer, or investment  
22 advisor, licensed to do business in this state.

23       (5) Immediate family member means a spouse, child, parent, or  
24 sibling, of a qualified adult.

25       (6) Qualified adult means a person sixty years of age or older.

26       (7) Qualified individual means a person associated with a firm who  
27 serves in a supervisory capacity for the financial advisor as part of his  
28 or her position with the firm.

29       Sec. 3. (1) If a financial advisor who has direct contact with a  
30 qualified adult reasonably believes that financial exploitation of a  
31 client who is a qualified adult has occurred, has been attempted, or is

1    being attempted, the financial advisor may notify a qualified individual.  
2        (2) A qualified individual, either (a) upon receiving a notice of  
3    potential, attempted, or ongoing financial exploitation of a client who  
4    is a qualified adult or (b) in his or her own discretion based upon  
5    information available to the qualified individual, may notify the  
6    appropriate agencies of such possible exploitation. Subsequent to the  
7    qualified individual notifying the agencies of such suspected  
8    exploitation, the qualified individual may notify an immediate family  
9    member, legal guardian, conservator, co-trustee, successor trustee, or  
10   agent under power of attorney of the qualified adult of the suspected  
11   financial exploitation of the qualified adult.

12        Sec. 4. (1) A qualified individual, or a firm upon written request  
13    of a qualified individual, may temporarily refuse a request to execute a  
14   financial transaction or disburse transaction proceeds involving an  
15   account or other asset of a client who is a qualified adult for up to  
16   fifteen business days after the date on which the qualified individual or  
17   firm first delayed the execution of the transaction or disbursement of  
18   the funds if the qualified individual or firm has a reasonable basis to  
19   believe that the execution of the transaction or disbursement of proceeds  
20   will result in the financial exploitation of the client. Upon taking this  
21   action, the qualified individual or firm will:

22            (a) Notify the appropriate agencies within three business days of  
23    the temporary refusal to execute the transaction or disburse the  
24   transaction proceeds; and

25            (b) Make a reasonable effort to notify the client within three  
26   business days of the temporary refusal to execute the financial  
27   transaction or disburse the proceeds from a transaction.

28            (2) The appropriate agency, upon receiving a notice from a qualified  
29   individual or firm that the qualified individual or firm is delaying the  
30   execution of or disbursement of funds from a financial transaction due to  
31   suspected financial exploitation, shall investigate the reported

1    transaction and determine if the qualified individual or firm should  
2    proceed with or continue to postpone the execution of or disbursement of  
3    funds from the transaction. The agency shall deliver its determination in  
4    writing to the qualified individual or firm within the fifteen business-  
5    day time period specified in section 4 of this act.

6                 (3) The qualified individual's or firm's authority to refuse to  
7    execute the transaction or disburse the proceeds from a transaction shall  
8    expire upon the sooner of:

9                 (a) The time when the qualified individual or firm reasonably  
10   believes that the execution of the transaction or disbursement of  
11   proceeds will not result in the financial exploitation of the qualified  
12   adult; or

13                 (b) Unless extended in accordance with section 4 of this act,  
14   fifteen business days after the initial refusal to execute the  
15   transaction or disburse the proceeds from a transaction; or

16                 (c) Receiving a determination from the appropriate agency that the  
17   qualified individual or firm should proceed with the execution of or  
18   disbursement of funds from the transaction.

19                 (4) The temporary delay of the execution of a transaction or  
20   disbursement of proceeds authorized by this section may be extended if  
21   the appropriate agency enters an order or obtains an order from a court  
22   of competent jurisdiction extending the temporary delay, or any other  
23   protective relief.

24                 (5) If the appropriate agency has not delivered the written  
25   determination required under section 4 of this act within the time period  
26   specified in that section, or as extended in accordance with such  
27   section, the qualified individual or firm shall proceed with the  
28   execution of or disbursement of funds from the transaction.

29                 Sec. 5. A qualified individual or firm may provide access to or  
30   copies of records that are relevant to the suspected financial  
31   exploitation of a client who is a qualified adult to the agencies. The

1 records may include historical records or records relating to the most  
2 recent transactions relating to the suspected financial exploitation of  
3 the qualified adult. All records made available to the agencies under  
4 this section shall not be considered public record.

5 Sec. 6. Notwithstanding any other provision of law to the contrary,  
6 a financial advisor, qualified individual, or firm who, in good faith and  
7 exercising reasonable care, complies with the provisions of this law and  
8 takes action in accordance with any provision of this act shall be immune  
9 from civil, criminal, administrative, or other liability for such  
10 actions.

11 Sec. 7. (1) The agencies may develop training resources to assist  
12 financial advisors, qualified individuals, and firms in the prevention  
13 and detection of financial exploitation of a qualified adult. Such  
14 resources may include indicators of financial exploitation of qualified  
15 adults and potential steps financial advisors, qualified individuals, and  
16 firms may take to prevent suspected financial exploitation of qualified  
17 adults as authorized by sections 1 to 9 of this act.

18 (2) The use of such resources by any financial advisor, qualified  
19 individual, or firm shall be voluntary in nature and firms are permitted,  
20 but shall not be required to, develop and implement proprietary training  
21 resources and programs for use by their employees and representatives.

22 (3) The use of any such training resources, whether developed by the  
23 agencies or by private enterprise shall not create an assumption or  
24 implication that financial advisors, qualified individuals, or firms are  
25 qualified to, have the ability to, or are responsible for making a  
26 determination about any individual's cognitive condition or possible  
27 cognitive impairment.

28 Sec. 8. Any notice, notification, or determination required under  
29 sections 1 to 9 of this act shall be provided in writing or  
30 electronically by email.

31 Sec. 9. The agencies may, in accordance with the Administrative

1   Procedure Act, adopt and promulgate reasonable rules and regulations  
2   necessary or proper to carry out the purposes of sections 1 to 9 of this  
3   act.