

LEGISLATIVE BILL 297

Approved by the Governor March 31, 2021

Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to banking and finance; to adopt the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act.

Sec. 2. For purposes of the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act, unless the context otherwise requires:

(1) Agencies means:

(a) The Adult Protective Services Division of the Department of Health and Human Services; and

(b) The Department of Banking and Finance;

(2) Agent has the same meaning as in section 8-1101;

(3) Broker-dealer has the same meaning as in section 8-1101;

(4) Eligible adult means:

(a) A senior adult as defined in section 28-366.01; or

(b) A vulnerable adult as defined in section 28-371;

(5) Financial exploitation means:

(a) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or other property of an eligible adult; or

(b) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or other property to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or other property; or

(ii) Convert money, assets, or other property of the eligible adult to deprive such eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or other property;

(6) Investment adviser has the same meaning as in section 8-1101;

(7) Investment adviser representative has the same meaning as in section 8-1101; and

(8) Qualified person means any broker-dealer, investment adviser, agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Sec. 3. If a qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is occurring or being attempted, the qualified person may notify the agencies.

Sec. 4. (1) If a qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is occurring or being attempted, a qualified person may notify any third party previously designated by the eligible adult or any person allowed to receive notification under applicable law or any customer agreement. Notification may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(2) Any qualified person that in good faith and exercising reasonable care makes a notification pursuant to subsection (1) of this section shall be immune from administrative or civil liability that might otherwise arise from such notification or for any failure to notify the eligible adult of the disclosure.

Sec. 5. (1) A broker-dealer or investment adviser may delay a transaction or disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(a) The broker-dealer or investment adviser reasonably believes, after initiating an internal review of the requested transaction or disbursement, that the requested transaction or disbursement may result in financial exploitation of an eligible adult; and

(b) The broker-dealer or investment adviser:

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

(ii) Immediately, but in no event more than two business days after the requested transaction or disbursement, notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the internal review's results to the agencies upon request.

(2) Any delay of a transaction or disbursement as authorized by this section will expire upon the sooner of:

(a) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the eligible adult; or

(b) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than thirty business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds unless sooner terminated by either of the agencies or by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the transaction or disbursement of the funds or may order other protective relief based on the petition of (a) either or both of the agencies, (b) the broker-dealer or investment adviser that initiated the delay under this section, or (c) any other interested party.

(4) Any qualified person that, in good faith and exercising reasonable care, complies with this section shall be immune from any administrative or civil liability that might otherwise arise from such delay or notification.

Sec. 6. (1) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to any suspected or attempted financial exploitation of an eligible adult to (a) the Adult Protective Services Division of the Department of Health and Human Services, (b) other agencies charged with administering state adult protective services laws, and (c) law enforcement, either as part of a referral to the agencies or to law enforcement, or upon request of the agencies or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or disbursement or transactions or disbursements that may comprise financial exploitation of an eligible adult.

(2) Any qualified person that, in good faith and exercising reasonable care, complies with subsection (1) of this section shall be immune from any administrative or civil liability that might otherwise arise from providing such access to records.

(3) Any records made available to agencies and law enforcement under this section shall not be considered public records subject to disclosure pursuant to sections 84-712 to 84-712.09.

(4) Nothing in this section shall limit or otherwise impede the authority of the Department of Banking and Finance to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.