



# Senate

General Assembly

**File No. 342**

February Session, 2018

Senate Bill No. 474

*Senate, April 9, 2018*

The Committee on Banking reported through SEN. WINFIELD of the 10th Dist. and SEN. MARTIN of the 31st Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT PROTECTING ELDERLY ADULTS FROM FINANCIAL EXPLOITATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2018*) (a) For purposes of this  
2 subsection, unless the context otherwise requires:

3 (1) "Eligible adult" means an elderly person, as defined in section  
4 17b-450 of the general statutes, or any adult in the care or custody of  
5 the Department of Social Services or any successor to such agency;

6 (2) "Financial exploitation" means the act or process of taking  
7 advantage of an eligible adult by another person or caretaker whether  
8 for monetary, personal or other benefit, gain or profit. Such conduct  
9 includes, without limitation, (A) the wrongful or unauthorized taking,  
10 withholding, appropriation or use of money, assets or property of an  
11 eligible adult; or (B) any act or omission by a person, including  
12 through the use of a power of attorney, guardianship or

13 conservatorship of an eligible adult to: (i) Obtain control, through  
14 deception, intimidation or undue influence, over the eligible adult's  
15 money, assets or property to deprive the eligible adult of the  
16 ownership, use, benefit or possession of such money, assets or  
17 property; or (ii) convert money, assets or property of the eligible adult  
18 to deprive such eligible adult of the ownership, use, benefit or  
19 possession of such money, assets or property; and

20 (3) "Qualified individual" means any agent, investment adviser  
21 agent or person who serves in a supervisory, compliance or legal  
22 capacity for a broker-dealer or investment adviser.

23 (b) (1) (A) If a qualified individual has reasonable cause to suspect  
24 or believe that financial exploitation of an eligible adult has occurred  
25 or has been attempted, the qualified individual may, not later than two  
26 business days after the conduct in issue, report to the Commissioner of  
27 Social Services and the Banking Commissioner such suspected  
28 exploitation and the basis for such report in any reasonable manner.  
29 The Commissioner of Social Services, in consultation with the Banking  
30 Commissioner, may develop forms or an electronic reporting protocol  
31 to facilitate the reporting process.

32 (B) A qualified individual who, in good faith and exercising  
33 reasonable care, makes a report pursuant to this subsection shall be  
34 immune from administrative or civil liability that might otherwise  
35 arise solely from the disclosure of any information included in such  
36 report or for any failure to notify the customer or client of such  
37 disclosure. Such immunity shall not attach where the qualified  
38 individual was a participant in the misconduct described in the report.  
39 Nothing in this subsection shall affect any existing law imposing  
40 criminal liability for, including, but not limited to, perjury, or  
41 fraudulent or malicious reporting.

42 (2) (A) Where an eligible adult has authorized the qualified  
43 individual to discuss the eligible adult's financial affairs with a trusted  
44 contact person, the qualified individual may notify such trusted  
45 contact person of the suspected financial exploitation, unless the

46 qualified individual reasonably believes such trusted contact person is  
47 involved in the financial exploitation or other abuse of the eligible  
48 adult. A qualified individual who, in good faith and exercising  
49 reasonable care, provides notice to a trusted contact person under this  
50 subdivision shall be immune from administrative or civil liability that  
51 might otherwise arise solely from such disclosure. Such immunity  
52 shall not attach where the qualified individual was a participant in the  
53 misconduct described in the report. Nothing in this subdivision shall  
54 affect any law imposing criminal liability in connection with such  
55 disclosure.

56 (B) Except in the case of an institutional account, an investment  
57 adviser registered or required to be registered under chapter 672a of  
58 the general statutes shall maintain records reflecting the name and  
59 contact information for any trusted contact person age eighteen or  
60 older whom an advisory client has authorized to be contacted about  
61 the client's account. At the time the advisory account is opened or  
62 updated, the investment adviser shall disclose to the client in writing,  
63 in physical or electronic form, that the adviser or its qualified  
64 individual is authorized to contact the trusted contact person and  
65 disclose information about the client's account to address possible  
66 financial exploitation, confirm the specifics of the client's current  
67 contact information, health status or the identity of any legal guardian,  
68 executor, trustee or holder of a power of attorney. The absence of the  
69 name of or contact information for a trusted contact person shall not  
70 prevent an investment adviser from opening or maintaining an  
71 account for a client provided the adviser makes reasonable efforts to  
72 obtain the name of and contact information for the trusted contact  
73 person.

74 (3) (A) A broker-dealer or investment adviser may delay a  
75 disbursement from an account of an eligible adult or an account on  
76 which an eligible adult is a beneficiary if the broker-dealer, investment  
77 adviser or qualified individual reasonably believes, after immediately  
78 initiating an internal review of the requested disbursement, that the  
79 requested disbursement may result in financial exploitation of the

80 eligible adult. During any such disbursement delay, the funds shall be  
81 held in temporary escrow pending resolution of the disbursement  
82 decision.

83 (B) The broker-dealer or investment adviser shall, not more than  
84 two business days after the requested disbursement, provide written  
85 notice of the proposed delay and its reasons to all parties authorized to  
86 transact business on the account, except that such notice shall not be  
87 required to any party reasonably believed to have engaged in  
88 suspected or attempted financial exploitation of the eligible adult.

89 (C) Any disbursement delay authorized by this subdivision shall  
90 expire on the earlier of: (i) A determination by the broker-dealer or  
91 investment adviser that the disbursement will not result in financial  
92 exploitation of the eligible adult; or (ii) fifteen business days after the  
93 first delayed disbursement of the funds. The Department of Social  
94 Services or the Banking Commissioner may request that any  
95 disbursement delay otherwise scheduled to expire within fifteen days  
96 be extended to a date no more than twenty-five business days after the  
97 date of the first delayed disbursement of the funds. Nothing in this  
98 subdivision shall preclude the Department of Social Services, the  
99 Banking Commissioner or a court of competent jurisdiction from  
100 terminating the disbursement delay at an earlier date.

101 (D) A court of competent jurisdiction may enter an order extending  
102 the disbursement delay or may order other protective relief based on  
103 the petition of the Department of Social Services, the Banking  
104 Commissioner, the broker-dealer or investment adviser that initiated  
105 the disbursement delay or other interested party.

106 (E) A broker-dealer or investment adviser that, in good faith and  
107 exercising reasonable care, complies with this subdivision shall be  
108 immune from any administrative or civil liability that might otherwise  
109 arise from such disbursement delay.

110 (4) A broker-dealer or investment adviser shall provide access to or  
111 copies of records that are relevant to the suspected or attempted

112 financial exploitation of an eligible adult to the Banking Commissioner  
 113 and to other law enforcement, either as part of a referral to the Banking  
 114 Commissioner or to law enforcement, or upon request of the Banking  
 115 Commissioner or law enforcement pursuant to an investigation or  
 116 examination, as the case may be. Such records shall include relevant  
 117 requests for disbursements; documentation supporting any  
 118 disbursement delay; documentation supporting the broker-dealer or  
 119 investment adviser's reasonable belief that financial exploitation has  
 120 occurred or is occurring; the name and title of the person authorizing  
 121 the disbursement delay; notifications to affected parties; and  
 122 documentation relating to the firm's internal review of the matter. Any  
 123 records made available to agencies hereunder shall not be considered  
 124 public records for purposes of chapter 14 of the general statutes. In  
 125 accordance with subsection (c) of section 36b-31 of the general statutes,  
 126 the Banking Commissioner may share and exchange with affected  
 127 social services regulators information and documents related to the  
 128 suspected financial exploitation. Nothing in this subdivision shall limit  
 129 or otherwise impede the authority of the Banking Commissioner to  
 130 access or examine the books and records of broker-dealers and  
 131 investment advisers as otherwise provided by law.

132 (5) A broker-dealer or investment adviser subject to this subsection  
 133 shall develop training policies or programs reasonably designed to  
 134 ensure that qualified individuals understand and can effectively carry  
 135 out the provisions of this subsection where necessary.

136 (6) If any provision of this subsection is preempted by federal law,  
 137 the provisions of federal law shall control.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	New section

**BA**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which establishes a process for certain financial services employees to report suspected financial exploitation of elderly adults, is not anticipated to have a fiscal impact to the state or municipalities.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****SB 474*****AN ACT PROTECTING ELDERLY ADULTS FROM FINANCIAL EXPLOITATION.*****SUMMARY**

This bill establishes a process by which (1) certain financial services employees may report suspected financial exploitation of anyone who is at least age 60 or under the care or custody of the Department of Social Services (DSS) (i.e., “eligible adult”) and (2) broker-dealers or investment advisers may delay the disbursement of funds from such person’s account if there is suspected exploitation.

Under the bill, the report must be made to the Department of Banking (DOB) and DSS commissioners. The suspected victim’s trusted contact person may also be notified, unless that person is suspected of the exploitation.

The bill allows a court to order an extension of the disbursement delay or other protective relief. And it provides immunity from administrative or civil liability related to disclosures in the report or disbursement delays if the individual’s actions or failure to act was done in good faith and with reasonable care (e.g., failing to notify the customer or client of the disclosure). Immunity does not exist, however, if the individual participated in the alleged misconduct. The bill also does not affect criminal liability.

The bill requires investment advisers and broker-dealers to develop training policies or programs for their agents or those who work on their behalf to understand and effectively carry out the bill’s provisions.

EFFECTIVE DATE: October 1, 2018

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## **FINANCIAL EXPLOITATION**

Under the bill, “financial exploitation” occurs when someone takes advantage of an eligible adult for monetary, personal, or other benefit, gain, or profit. It includes:

1. the wrongful or unauthorized taking, withholding, appropriating, or using of money, assets, or property or
2. an act or omission to deprive someone of the ownership, use, benefit, or possession of money, assets, or property.

The act or failure to act may occur by, including if done by a power of attorney, guardianship, or conservatorship, (1) obtaining control, through deception, intimidation, or undue influence or (2) converting the eligible adult’s money, assets, or property.

## **VOLUNTARY REPORTING**

### ***Authority to Report***

Under the bill, the persons who may report suspected financial exploitation include an agent, investment adviser agent, or someone in a supervisory, compliance, or legal role for a broker-dealer or investment adviser (i.e., a qualified individual).

### ***Report to Agencies***

Under the bill, a reporting qualified individual must have reasonable cause to suspect or believe that financial exploitation has occurred or been attempted. The report must be (1) made in any reasonable manner to the DOB and DSS commissioners, within two business days after the concerning conduct, and (2) include the basis for the report. The bill allows the DSS commissioner, in consultation with the DOB commissioner, to develop forms or an electronic reporting protocol to facilitate reporting.

### ***Notice to Trusted Contact Person***

The bill allows a qualified individual to notify the suspected victim’s “trusted contact person.” A “trusted contact person” is an individual authorized to discuss the victim’s financial affairs. In no



case may notice be provided to the trusted contact person if there is reasonable belief that he or she is involved in the exploitation or other abuse.

The bill requires registered investment advisers, except for institutional accounts, to keep records of the name and contact information for any trusted contact person the client authorized to discuss his or her account. A trusted contact person must be at least age 18.

Under the bill, when the client's account is opened or updated, the investment adviser must inform the client in writing, either in print or electronically, that the trusted contact person may be contacted to (1) address possible financial exploitation and (2) confirm the client's contact information, health status, or identify any legal guardian, executor, trustee, or holder of a power of attorney.

The bill specifies that not having the name of or contact information for a trusted contact person does not prevent an investment adviser from opening or maintaining an account. But the adviser must make reasonable efforts to get the name and contact information.

## **DISBURSEMENT DELAY**

### ***When Allowed***

The bill authorizes broker-dealers and investment advisers to delay the disbursement of funds from an account of someone who is at least 60 years of age or who is under DSS's care or custody, or from an account in which such person is a beneficiary, if there is a reasonable belief that the disbursement may constitute financial exploitation. The reasonable belief must result from an immediate internal review of the requested disbursement.

Under the bill, the broker-dealer or investment advisor, as applicable, must provide written notice of the delay within two business days after the disbursement request. The notice must (1) include the reasons for the delay and (2) be given to all parties who may transact business on the account, but not to those who are

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reasonably believed to have participated in the financial exploitation.

The bill requires the delayed funds to be held in temporary escrow pending the resolution of the matter.

### ***Delay Expiration***

Under the bill, a disbursement delay expires the earlier of (1) when the broker-dealer or investment adviser determines that disbursement will not result in financial exploitation or (2) 15 business days after the first delayed disbursement. The DOB or DSS commissioner may ask for a delay to be extended for up to 10 additional business days (i.e., a maximum of 25 business days from the first delayed disbursement). But the bill specifies that the DOB or DSS commissioner or court may end a delay at an earlier date.

### ***Court Action***

The bill authorizes a court of competent jurisdiction to extend a disbursement delay or provide other protective relief. The orders must be based on the petition by DOB, DSS, the broker-dealer or investment advisor that initiated the delay, or another interested party.

## **ENFORCEMENT AUTHORITY ACCESS TO RECORDS**

The bill requires broker-dealers and investment advisers to make the records related to a suspected or attempted financial exploitation, or copies of them, accessible to the DOB commissioner or to law enforcement. The access may result from a referral to the commissioner or law enforcement, or be at the commissioner's or law enforcement's request due to an investigation or examination.

Under the bill, the records must include:

1. relevant disbursement requests,
2. documentation supporting a disbursement delay and the reasonable belief that financial exploitation has occurred or is occurring,
3. the name and title of the person who authorized the

disbursement delay,

4. notifications to affected parties, and
5. documentation related to the firm's internal review.

The bill allows the DOB commissioner to share and exchange information and documents related to the suspected financial exploitation with relevant social services regulators. But, the bill specifies that these records, when provided to state agencies, are not considered public records and are not subject to public disclosure under the Freedom of Information Act.

## **BACKGROUND**

### ***Related Federal Rules***

The Securities and Exchange Commission adopted a Financial Industry Regulatory Authority's (FINRA) rule that allows for temporary holds on disbursements of funds or securities to certain customers if there is a reasonable belief of financial exploitation. The rule applies to customers who are (1) at least age 65 or (2) at least age 18 and there is a reasonable belief that he or she has a mental or physical impairment that makes him or her unable to protect his or her interests (FINRA Rule 2165). Another rule requires reasonable efforts to obtain the name and contact information of a trusted contact person for a customer's account (FINRA Rule 4512).

## **COMMITTEE ACTION**

Banking Committee

Joint Favorable

Yea 19    Nay 0    (03/20/2018)