SENATE BILL

252-FN

AN ACT relative to the detection and prevention of financial exploitation of vulnerable adults.


COMMITTEE: Commerce

ANALYSIS

This bill permits broker-dealers and investment advisors to delay disbursements from accounts of eligible individuals when such broker-dealers and investment advisors, or other qualified individuals, reasonably believe that the requested disbursement may result in financial exploitation.

This bill is a request of the bureau of securities regulation.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to the detection and prevention of financial exploitation of vulnerable adults.

Be it Enacted by the Senate and House of Representatives in General Court convened:

204:1 New Section; Securities; Uniform Securities Act; Fraud and Liabilities; Financial Exploitation of Vulnerable Adults. Amend RSA 421-B by inserting after section 5-507 the following new section:

421-B:5-507-A Financial Exploitation of Vulnerable Adults.

(1) For purposes of this section the following words shall have the following meanings unless the context clearly indicates otherwise:

(A) "Eligible adult" means:

(i) A person 65 years of age or older; or

(ii) A person, 18 years of age or older, who is "vulnerable" as defined in RSA 161-F:43, VII.

(B) "Financial exploitation" means:

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

(ii) Any act or omission by a person, whether direct or through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, intended to:

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

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

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

(2) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual may promptly notify:

(A) The secretary of state, provided nothing in this section shall affect the reporting requirements of RSA 161-F.
(B) Any third party previously designated by the eligible adult, provided that disclosure shall not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(3) A qualified individual that, in good faith and exercising reasonable care, makes a disclosure of information pursuant to RSA 421-B:5-507-A, (2) shall be immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

(4) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if the broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult, and the broker-dealer or investment adviser:

(A) Not more than 2 business days after the requested 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;

(B) Not more than 2 business days after the requested disbursement, notifies the secretary of state of such delay; and

(C) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the secretary of state within 7 business days after the day the broker-dealer or investment adviser first delayed disbursement of the funds.

(5) No delay of a disbursement shall continue past the earlier of:

(A) The time required by the broker-dealer or investment adviser to make a determination that the 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 disbursement of the funds, unless the secretary of state requests that the broker-dealer or investment adviser extend the delay. Upon such a request, the disbursement shall be delayed no more than 25 business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless sooner terminated by the secretary of state or an order of a court of competent jurisdiction.

(6) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief upon the petition of the secretary of state, the broker-dealer or investment adviser that initiated the delay under RSA 421-B:5-507-A, (4), or other interested party.
(7) A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with RSA 421-B:5-507-A, (4) and (5) shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement in accordance with this section.

(8) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to law enforcement, either as part of a referral to law enforcement, or upon request of law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction that may comprise financial exploitation of an eligible adult. Any records made available to law enforcement under this section shall not be considered a "governmental record" as defined in RSA 91-A. Nothing in this provision shall limit or otherwise impede the authority of the secretary of state to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

204:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 10, 2019
Effective Date: September 08, 2019