

LAWS OF DELAWARE
VOLUME 81
CHAPTER 387
149th GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 332
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 6 AND 31 OF THE DELAWARE CODE RELATING TO FINANCIAL EXPLOITATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 3902, Title 31 of the Delaware Code by making deletions as shown by strike through as follows:

As used in this chapter:

(12) “Financial institution” means any of the following:

a. A “depository institution,” as defined in § 3(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(c)).

b. A “federal credit union” or “state credit union,” as defined in § 101 of the Federal Credit Union Act (12 U.S.C. § 1786(r)).

c. An “institution-affiliated party,” as defined in § 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(u)).

d. A “~~broker dealers,~~” “~~investment adviser,~~” or “~~federal covered adviser,~~” as defined in § 73-103 of Title 6.

Section 2. Amend Section 73-103, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and re-designating accordingly:

§ 73-103 Definitions.

(a) Generally. – When used in this chapter, unless the context otherwise requires:

() “Eligible Adult” means:

a. An “elderly person” as defined in § 222 of Title 11; or

b. A “vulnerable adult” as defined in § 1105 of Title 11.

() “Financial Exploitation” means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the eligible adult by any person or entity for any person’s or entity’s profit or advantage other than for the eligible adult’s profit or advantage. “Financial exploitation” includes, but is not limited to:

a. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an eligible adult to obtain or use the property, income, resources, or trust funds of the eligible adult for the benefit of a person or entity other than the eligible adult;

b. The breach of a fiduciary duty, including but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the eligible adult for the benefit of a person or entity other than the eligible adult; and

c. Obtaining or using an eligible adult’s property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the eligible adult lacks the capacity to consent to the release or use of his or her property, income, resources or trust funds.

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

Section 3. Amend Subchapter III, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 73-307. Protection of Vulnerable Adults from Financial Exploitation.

(a) 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 shall promptly, but in no event more than 5 business days after the suspicion of financial exploitation, notify both the Director and the Department of Health and Social Services as consistent with Title 31, §3910. If more than one qualified individual working at the same broker-dealer or investment adviser suspects financial exploitation, that broker-dealer or investment adviser does not need to make more than one notification to the Director and one notification to the Department of Health and Social Services.

(b) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult, or otherwise permitted under existing law, rule, or regulation. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(c) 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:

(1) A 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

(2) The broker-dealer or investment adviser:

a. Immediately, but in no event more than two business days after the delayed 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. Immediately, but in no event more than two business days after the delayed disbursement, notifies the Director and the Department of Health and Social Services as consistent with Title 31, §3910; and

c. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and provides a status report to the Director and Adult Protective Services (as consistent with Title 31, § 3910) upon the request of the Director or the Department of Health and Social Services.

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

a. A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adults; or

b. 10 business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless the Director requests that the broker dealer or investment adviser extend the delay or the broker-dealer or investment adviser has not heard from either the Director or the Department of Health and Social Services. In either case, the delay shall expire no more than 40 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement of the funds unless otherwise terminated or extended by the Director or an order of a court of competent jurisdiction.

(4) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the Director, the broker-dealer or investment adviser that initiated the delay, or other interested party.

(d) 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 agencies charged with administering state adult protective services laws

and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. Records made available under this section are not public records. Nothing in this provision shall limit or otherwise impede the authority of the Director to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

(e) A qualified individual that, in good faith and exercising reasonable care, complies with §73-307(a), (b), or (c) shall be immune from any administrative or civil liability that might otherwise arise from such action.

Section 4. This Act shall take effect 90 days after its enactment into law.

Approved August 29, 2018