

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4377**

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[Originating in the Committee on the Judiciary;

February 20, 2020.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §32-6-601, §32-6-602, §32-6-603, §32-6-604, §32-6-605, §32-6-606, §32-6-  
3 607, §32-6-608, §32-6-609 and §32-6-610, all relating to the creation of The Protection of  
4 Eligible Adults From Financial Exploitation; defining terms; establishing the obligations and  
5 duties of broker-dealers and investment advisers to notify certain agencies of potential  
6 financial exploitation; permitting broker-dealers and investment advisers to delay a  
7 disbursement when financial exploitation is suspected; requiring the retention of records;  
8 and providing immunity from administrative and civil liability.

**ARTICLE 6. THE PROTECTION OF ELIGIBLE ADULTS FROM FINANCIAL  
EXPLOITATION.**

1 **§32-6-601. Short title.**

2 This article may be cited as “The Protection of Eligible Adults from Financial Exploitation  
3 Act”.

**§32-6-602. Definitions.**

1 In this article, unless the context otherwise requires:

2 “Agencies” means adult protective services and the Securities Commission, a Division of  
3 the State Auditor’s office.

4 “Financial exploitation” means:

5 (1) The wrongful or unauthorized taking, withholding, appropriation or use of securities,  
6 money, assets or property of an eligible adult; or

7 (2) Any act or omission taken by a person, including using a power of attorney,  
8 guardianship, or conservatorship of an eligible adult to:

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

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

14 “Eligible adult” means:

15 (1) A person 65 years of age or older; or

16 (2) A person subject to §9-6-1 et seq. of this code.

**§32-6-603. Governmental Disclosures.**

1 If a broker-dealer or investment adviser reasonably believes that financial exploitation of  
2 an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-  
3 dealer or investment adviser shall promptly notify the agencies.

**§32-6-604. Immunity for Governmental Disclosures.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 makes a disclosure of information pursuant to section 603 of this article is immune from  
3 administrative or civil liability that might otherwise arise from such disclosure or for any failure to  
4 notify the customer of the disclosure.

**§32-6-605. Third-Party Disclosures.**

1 If a broker-dealer or investment adviser reasonably believes that financial exploitation of  
2 an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-  
3 dealer or investment adviser may notify any reasonably associated individuals. Disclosure may  
4 not be made to any third party that is suspected of financial exploitation or other abuse of the  
5 eligible adult.

**§32-6-606. Immunity for Third-Party Disclosures.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 complies with section 605 of this article is immune from any administrative or civil liability that  
3 might arise from such disclosure.

**§32-6-607. Delaying Transactions or Disbursements.**

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

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

6 (2) The broker-dealer or investment adviser:

7 (i) Immediately, but in no event more than two business days after the broker-dealer or  
8 investment adviser first delayed the disbursement, provides written notification of the delay and  
9 the reason for the delay to all parties authorized to transact business on the account, unless any  
10 party is reasonably believed to have engaged in suspected or attempted financial exploitation of  
11 the eligible adult;

12 (ii) Immediately, but in no event more than two business days after the date on which the  
13 disbursement was first delayed, notifies the agencies; and

14 (iii) Continues its internal review of the suspected or attempted financial exploitation of  
15 the eligible adult as necessary and reports the investigation's results to the agencies on a  
16 reasonable and periodic basis, up to and including the resolution of the investigation.

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

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

21 (2) Fifteen business days after the date on which the broker-dealer or investment adviser  
22 first delayed the disbursement of the funds, unless either of the agencies requests that the broker-  
23 dealer or investment adviser extend the delay, in which case the delay shall expire when  
24 requested by an order of a court of competent jurisdiction.

**§32-6-608. Immunity for Delaying Transactions or Disbursements.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
2 complies with section 607 of this article is immune from any administrative or civil liability that  
3 might otherwise arise from such delay in a disbursement.

**§32-6-609. Records.**

1        A broker-dealer or investment adviser shall provide access to or copies of records that are  
2 relevant to the suspected or attempted financial exploitation of an eligible adult to agencies  
3 charged with administering state adult protective services laws and to law enforcement, either as  
4 part of a referral to the agency or to law enforcement, or upon request of the agency or law  
5 enforcement pursuant to an investigation. The records may include historical records as well as  
6 records relating to the most recent transaction or transactions that may comprise financial  
7 exploitation of an eligible adult. All records made available to agencies under this section shall  
8 not be considered a public record as defined in §29B-1-1 et seq. of this code. Nothing in this  
9 provision may limit or otherwise impede the authority of the Securities Commission, to access or  
10 examine the books and records of broker-dealers and investment advisers as otherwise provided  
11 by law.

**§32-6-610. Immunity for Complying with Records Requests.**

1 A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies  
2 with section 609 of this article is immune from any administrative or civil liability that might  
3 otherwise arise from such disclosure.

NOTE: The purpose of this bill is to create The Protection of Eligible Adults from Financial Exploitation Act. The bill defines “financial exploitation” and “eligible adult”; and details the obligations and duties of broker-dealers or investment advisers to notify certain agencies of potential financial exploitation of eligible adults.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.