

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3294

By Delegates Barnhart, Heckert, Holstein, J. Cannon,

Linville, Fehrenbacher, and Hott

[Introduced March 10, 2025; referred to the

Committee on Finance]

1 A BILL amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §31A-2C-1, §31A-2C-2, §31A-2C-3, §31A-2C-4, §31A-2C-5, §31A-2C-6, and
3 §31A-2C-7, relating to enacting the Bank Protections for Eligible Adults from Financial
4 Exploitation; providing findings, purpose, and intent to provide immunities to certain
5 persons for government disclosure of information when financial exploitation of an eligible
6 adult is suspected; providing definitions; permitting disclosure of eligible persons financial
7 information to certain third parties and designated government agencies; authorizing
8 depository institutions, broker-dealers, and investment advisors to delay, refuse, or
9 prevent certain activities and transactions to prevent financial exploitation of an eligible
10 adult; and proscribing immunities for depository institutions, broker-dealers, and
11 investment advisors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. BANKING AND FINANCIAL SERVICES PROVIDER PROTECTIONS
FOR ELIGIBLE ADULTS FROM FINANCIAL EXPLOITATION.

§31A-2C-1. Short title.

1 This article may be cited as "Banking and Financial Services Provider Protections for
2 Eligible Adults from Financial Exploitation".

§31A-2C-2. Legislative findings, purpose and intent.

1 (1) The Legislature recognizes that depository institutions, broker-dealers, and investment
2 advisers have duties imposed by law and by contract to conduct customer-directed transactions in
3 a timely manner, and in accordance with their customers' instructions.

4 (2) The Legislature recognizes that customers are increasingly being induced to authorize
5 transactions that are not in their interest.

6 (3) It is the intent of the Legislature to:

7 (a) Ensure that eligible adults have ready access to their funds;

8 (b) Provide depository institutions, broker-dealers, and investment advisers with the tools
9 and protections to intervene in customer-directed transactions when, in their discretion, the
10 transaction presents potential significant risk of harm to the customer; and

11 (c) Provide designated state agencies with the tools and information to investigate
12 potential financial exploitation.

13 (4) The Legislature does not intend to create a duty for depository institutions, broker-
14 dealers, and investment advisers to contravene the valid instructions of their customers and
15 nothing in this chapter creates such a duty.

§31A-2C-3.

Definitions

1 As used in this article, the following terms and phrases have the following meanings:

2 "Associated third-party" means an individual:

3 (1) Who is a parent, spouse, adult child, sibling, or other family member of an eligible adult
4 whom a depository institution, broker-dealer, and/or investment adviser believes is closely
5 associated with the eligible adult;

6 (2) Whom an eligible adult authorizes the depository institution, broker dealer, and/or
7 investment adviser to contact;

8 (3) Who is a co-owner, additional authorized signatory, or beneficiary on an eligible adult's
9 account or an agent under a power of attorney; or

10 (4) Who is an attorney, trustee, conservator, guardian or other fiduciary whom a court or a
11 government agency selects to manage some or all of the financial affairs of the eligible adult.

12 "Account" means any of the following:

13 (1) A contract of deposit of funds between the depositor and a Depository Institution and:

14 (A) The account is a consumer account owned by an eligible adult, whether individually or
15 with one or more other persons; or

16 (B) An eligible adult is a beneficiary of the conservatorship account or guardianship
17 account; or

(C) The account is a line of credit owned by an eligible adult, whether individually or with one or more other persons.

(2) Any account of a broker-dealer or investment adviser for which a client or customer has the authority to transact business.

"Broker-dealer" shall have the same meaning as defined in §32-4-401 of this code.

"Depository institution" shall have the same meaning as §31-17A-2 of this code.

"Designated state agency" means the entity responsible for receiving reports of alleged or suspected maltreatment or financial exploitation of an eligible adult including the West Virginia Department of Human Services Bureau for Social Services and the West Virginia Attorney General.

"Eligible adult" means:

(1) A person 65 years of age or older or a person subject to §9-6-1 et seq. of this code; or

(2) A person 18 years or older who

(A) Has a substantial mental or functional impairment that significantly interferes with their ability to make financial decisions or for whom a guardian or conservator has been appointed under state law; and

(B) The depository institution, broker-dealer, and/or investment adviser has actual knowledge that the person has an appointed guardian or conservator under state law.

"Financial exploitation" means:

(1) The wrongful or unauthorized taking, withholding, appropriation, expenditure, or use of money, assets, or property owned by an eligible adult; or

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

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

(B) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

"Investment adviser" has the same meaning as defined in §32-4-401 of this code.

§31A-2C-4. Government disclosures.

A depository institution, broker-dealer, investment adviser, and/or their employee(s) who believe that financial exploitation of an eligible adult has occurred, may have been attempted, or is being attempted, the depository institution, broker-dealer, investment adviser, and/or their employee(s) shall promptly notify a designated state agency.

§31A-2C-5. Authority to delay, refuse, or prevent certain activities.

(a) When, based on information they have individually observed or information they have received from a government agency or a law-enforcement agency, a depository institution, broker-dealer, investment adviser, and/or their employee(s) believe that financial exploitation of an eligible adult may have occurred, has been attempted, is occurring, or is being attempted, the depository institution, broker-dealer, investment adviser, and/or their employee(s) may, but are not required to:

(1) Delay or refuse one or more transactions with or involving the eligible adult;

(2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the eligible adult's account;

(3) Prevent a change in ownership of the eligible adult's account;

(4) Prevent a transfer of funds from the eligible adult's account to an account owned wholly or partially by another person;

(5) Refuse to comply with instructions given to the depository institution, broker-dealer, or investment adviser by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the eligible adult; or

(6) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an eligible adult at death.

(b) A depository institution, broker-dealer, investment adviser, and/or their employee(s) are not required to act under subsection (a) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use their sole discretion to determine whether or not to act under subsection (a) of this section based on the information available to them at the time.

(c) The authority to delay a transaction set forth in subsection (a) of this section expires:

(1) Thirty business days after the date on which the depository institution, broker-dealer, and/or investment adviser first acted under subsection (a) of this section;

(2) When the depository institution, broker-dealer, and/or investment adviser is satisfied in its sole discretion that the transaction or act will not likely result in financial exploitation of the eligible adult; or

(3) Upon an order of a court of competent jurisdiction directing the release of funds.

(d) Unless otherwise directed by order of a court of competent jurisdiction, a depository institution, broker-dealer, and/or investment adviser may extend the duration of a delay under subsection (c) of this section based on a reasonable belief that the financial exploitation of an eligible adult may continue to occur or continue to be attempted.

(e) Notwithstanding any other law to the contrary, the refusal to engage in a transaction as authorized under subsection (a) of this section may not constitute the wrongful dishonor of an item under §46-4-1 *et seq.* of this code.

(f) A reasonable belief that payment of a check will facilitate the financial exploitation of an eligible adult shall constitute reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. § 5001 *et seq.*, the federal Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq.*, and 12 C.F.R. part 229. Nothing herein, however, requires depository institutions, broker-dealers, investment advisers, and/or their employee(s), to review the checks of eligible adults.

(g) A delay or refusal to complete a funds transfer request as authorized under subsection

(a) of this section does not violate §46-4A- 1 *et seq.* of this code: *Provided*, That if a transaction is delayed under subsection (a) of this section, the payment order is not considered as received until the hold is removed and the depository institution and/or broker dealer submits the payment order for processing. Funds transfer and payment order shall have the same meaning as defined in §46-4A-1 *et seq.* of this code.

§31A-2C-6. Third Party Notifications

(a) A depository institution, broker-dealer, investment adviser, and/or their employee(s) may notify an associated third-party, if any, if the depository institution, broker-dealer, investment adviser, or their employee(s) believe that the financial exploitation of the eligible adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(b) A depository institution, broker-dealer, investment adviser, and/or their employee(s), may choose not to notify an associated third-party as described in subsection (a) of this section, if the depository institution, broker-dealer, investment adviser, or employee(s) believe that the third party is, may be, or may have been engaged in the financial exploitation of the eligible adult.

(c) When providing information under subsection (a) of this section, a depository institution, broker-dealer, investment adviser, and/or their employee(s) may limit the information provided to disclosing their suspicion that the eligible adult may be a victim or target of financial exploitation.

(d) Any disclosure under subsection (a) of this section is exempt from coverage by state privacy laws and/or requirements.

§31A-2C-7. Immunities

(a) A depository institution, broker-dealer, investment adviser, or their employee(s) who makes, or chooses not to make a disclosure pursuant to §31A-2C-4 of this code, notify an associated third-party pursuant to §31A-2C-6 of this code, or participate in a judicial proceeding, administrative proceeding, or investigation arising from a notification or report, are immune from any civil, criminal, or administrative liability arising from the disclosure, non-disclosure, notification,

6 or participation, unless the depository institution, broker-dealer, investment adviser, or their
7 employee(s) had actual knowledge of financial exploitation and acted with a malicious purpose.

8 (b) A depository institution, broker-dealer, investment adviser, and/or their employee(s)
9 delays, refuses, or prevents a transaction pursuant to §31A-2C-5 of this code, or decides not to
10 delay, refuse, or prevent a transaction pursuant to §31A-2C-5 of this code, are immune from any
11 civil, criminal, or administrative liability resulting from that action or inaction, unless the depository
12 institution, broker-dealer, investment adviser, or their employee(s) acted with actual knowledge of
13 the financial exploitation and with intent to assist in the furtherance of such financial exploitation.

14 (c) A depository institution, broker-dealer, investment advisor, and/or their employees who
15 accepts from the eligible adult the designation of an associated third-party, the depository
16 institution, broker-dealer, investment advisor, and/or their employees are immune from any civil,
17 criminal, or administrative liability resulting from an assertion that the information provided by the
18 eligible adult regarding the associated third-party was not validated by the depository, broker-
19 dealer, investment advisor, and or their employees.

NOTE: The purpose of this bill is to provide banking protections for eligible adults from financial exploitation by permitting depository institutions, broker-dealers, and investment advisors to delay, refuse, or prevent certain activities and financial transactions when an entity or employer suspects financial exploitation of an elder adult or incapacitated adult may be at issue. This bill further permits disclosure of such activity or financial transaction to an eligible adults' authorized third-party as well as a designated state agency.

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