

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Engrossed
Committee Substitute
for
Senate Bill 848

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[Reported March 29, 2025, from the Committee on
the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding 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 banking and financial services provider protections for
4 eligible adults from financial exploitation; providing findings, purpose, and intent; providing
5 definitions; permitting disclosure of eligible persons financial information to certain third
6 parties and designated government agencies; authorizing depository institutions, broker-
7 dealers, and investment advisors to delay, refuse, or prevent certain activities and
8 transactions to prevent financial exploitation of an eligible adult; and providing that this
9 article shall not serve as the basis for any private cause of action against depository
10 institutions, broker-dealers, or investment advisors, or their employees, acting in good
11 faith.

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 (a) 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
3 in a timely manner and in accordance with their customers' instructions.

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

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

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

8 (2) Provide depository institutions with the tools and protections to intervene in customer-
9 directed transactions when, in their discretion, the transaction presents potential significant risk
10 of harm to the customer, including providing broker-dealers and investment advisers acting in
11 accordance with actions traditionally associated with those committed by depository institutions,
12 and not in contradiction with any of the duties and protections described in §32-6-601 et seq. of
13 this code of those same tools; and

14 (3) Provide designated state agencies with the tools and information to investigate
15 potential financial exploitation.

16 (d) The Legislature does not intend to create a duty for depository institutions, broker-
17 dealers, and investment advisers to contravene the valid instructions of their customers and
18 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, 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;

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

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

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

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

23 "Depository institution" has the same meaning as defined in §31-17A-2 of this code.

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

28 "Eligible adult" means:

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

30 (2) A person 18 years or older who:

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

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

36 "Financial exploitation" means:

37 (1) The wrongful or unauthorized taking, withholding, appropriation, expenditure, or use of
38 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) Any depository institution and/or its employees who believe that financial exploitation of an eligible adult has occurred, may have been attempted, or is being attempted, shall promptly notify a designated state agency; and

(b) Any broker-dealer or investment adviser, and/or their employees, acting in accordance with actions traditionally associated with those committed by depository institutions, and not in contradiction with any of the duties and protections described in §32-6-601 *et seq.* of this code shall also 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, or a broker-dealer or investment adviser acting in accordance with actions traditionally associated with those committed by depository institutions, and not in contradiction with any of the duties and protections described in §32-6-601 *et seq.* of this code and/or their employees, 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 employees 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 employees 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 upon the sooner of:

(1) Fifteen 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) 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.

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

42 (f) A delay or refusal to complete a funds transfer request as authorized under subsection
43 (a) of this section does not violate §46-4A-101 *et seq.* of this code: *Provided*, That if a transaction
44 is delayed under subsection (a) of this section, the payment order is not considered as received
45 until the hold is removed and the depository institution and/or broker-dealer submits the payment
46 order for processing. Funds transfer and payment order have the same meanings as defined in
47 §46-4A-101 *et seq.* of this code.

§31A-2C-6. Third-party notifications.

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

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

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

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

§31A-2C-7. No private cause of action.

- 1 Compliance with this article shall not serve as the basis for a private cause of action
2 against any depository institution, broker-dealer, investment advisor, or their employees unless
3 there is clear and convincing evidence that these persons did not act in good faith.