

SENATE BILL NO. 464

August 28, 2019, Introduced by Senator LUCIDO and referred to the Committee on Insurance and Banking.

A bill to require financial institutions to report financial exploitation of their customers or members; to allow financial institutions to freeze customer or member transactions or assets under certain circumstances; to provide immunity from criminal, civil, or administrative liability to financial institutions for actions taken in good faith under this act; and to provide for the powers and duties of certain governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the

1 "financial exploitation prevention act".

2 Sec. 3. As used in this act:

3 (a) "Adult protective services" means the office, division, or
4 unit under the department of health and human services that is
5 charged with investigation of abuse, neglect, or exploitation of
6 vulnerable persons under the social welfare act, 1939 PA 280, MCL
7 400.1 to 400.119b.

8 (b) "Caregiver" means a parent or other relative responsible
9 for the health and safety of an individual, or a guardian,
10 conservator, or any other person with legal or fiduciary
11 obligations to an individual.

12 (c) "Examination and enforcement authority" means 1 of the
13 following:

14 (i) For the department of insurance and financial services, any
15 and all applicable authority provided under the credit union act,
16 2003 PA 215, MCL 490.101 to 490.601, the banking code of 1999, 1999
17 PA 276, MCL 487.11101 to 487.15105, or the money transmission
18 services act, 2006 PA 250, MCL 487.1001 to 487.1047.

19 (ii) For the National Credit Union Administration, any and all
20 applicable authority provided under the federal credit union act,
21 12 USC 1751 to 1795k.

22 (iii) For the Office of the Comptroller of the Currency, any and
23 all applicable authority provided under 12 USC 1 to 5710.

24 (iv) For the Federal Deposit Insurance Corporation, any and all
25 applicable authority provided under 12 USC 1811 to 1835a.

26 (v) For the Federal Reserve System, any and all applicable
27 authority provided under 12 USC 221 to 522.

28 (d) "Financial exploitation" means any of the following:

29 (i) A fraudulent or otherwise illegal, unauthorized, or

1 improper act or process of an individual who uses or attempts to
2 use the financial resources of another individual for monetary or
3 personal benefit, profit, or gain.

4 (ii) A fraudulent or otherwise illegal, unauthorized, or
5 improper act or process of an individual that results or is
6 intended to result in depriving another individual of rightful
7 access to or use of benefits, resources, belongings, or assets.

8 (e) "Financial institution" means a financial institution as
9 defined in section 4 of the Michigan strategic fund act, 1984 PA
10 270, MCL 125.2004, or a licensee under the money transmission
11 services act, 2006 PA 250, MCL 487.1001 to 487.1047.

12 (f) "Law enforcement agency" means a police agency of a city,
13 village, township, or county or the Michigan state police.

14 (g) "Written" means inscribed in a tangible or electronic
15 medium.

16 Sec. 5. (1) A financial institution must develop and implement
17 a policy for training employees to recognize signs of financial
18 exploitation of members or customers of the financial institution
19 by another individual through deception, manipulation, coercion,
20 intimidation, or improper leveraging of a caregiver relationship,
21 and for reporting that activity to a law enforcement agency or
22 adult protective services. A policy described in this subsection
23 must, at a minimum, provide for all of the following:

24 (a) Employee training, including, but not limited to,
25 instruction on all of the following:

26 (i) Common types of financial exploitation.

27 (ii) Signs of potential financial exploitation.

28 (iii) Relevant federal advisory opinions or guidance on elder
29 financial exploitation.

1 (iv) Internal protocols developed under subdivisions (b) to
2 (e).

3 (v) Reporting procedures under subdivision (g).

4 (b) Protocols to follow when financial exploitation of a
5 member or customer is found or suspected based on available facts.

6 (c) Protocols to follow when, after examination or
7 investigation of available facts, financial exploitation of a
8 member or customer is no longer suspected.

9 (d) Protocols to follow for delaying or placing a freeze on
10 transactions or assets relative to a member's or customer's
11 accounts, individually or jointly held, if financial exploitation
12 is found or suspected.

13 (e) Protocols to follow and documentation procedures if the
14 financial institution determines that a decision to delay or place
15 a freeze on transactions or assets relative to a member's or
16 customer's accounts, individually or jointly held, is not
17 sufficiently supported by available facts, would jeopardize the
18 safety of employees, members, or customers of the financial
19 institution, or would interfere with an ongoing law enforcement
20 investigation.

21 (f) Designation of 1 or more employees to make a report
22 described in subdivision (g).

23 (g) Except as provided in subsection (2) or as prohibited
24 under federal law, if the financial institution suspects or finds
25 financial exploitation of a member or customer by another
26 individual through deception, manipulation, coercion, intimidation,
27 or improper leveraging of a caregiver relationship, a procedure for
28 reporting that financial exploitation or suspected financial
29 exploitation to a law enforcement agency or adult protective

1 services. The policy shall require that a report made to adult
2 protective services is made in the manner described in section 11a
3 of the social welfare act, 1939 PA 280, MCL 400.11a, for a report
4 under that section. In determining whether and to what entity to
5 make a report, the policy must, at a minimum, require:

6 (i) Consideration of relevant federal advisory opinions or
7 guidance on elder financial exploitation and applicable employee
8 training.

9 (ii) Consideration of the safety of employees, the customer or
10 member that is the financial institution believes is the target of
11 financial exploitation, or other customers or members.

12 (iii) Consideration of the need and ability to preserve funds or
13 assets of the customer or member that the financial institution
14 believes is the target of financial exploitation.

15 (iv) Consideration of whether the financial institution can
16 discern, from available facts and knowledge of the member or
17 customer that is the potential victim of financial exploitation,
18 that that member or customer is an adult in need of protective
19 services, as that term is defined in section 11(b) of the social
20 welfare act, 1939 PA 280, MCL 400.11.

21 (2) A financial institution is not required to make a report
22 of financial exploitation or suspected financial exploitation under
23 any policy adopted under subsection (1) if, after investigation or
24 examination of available facts, the financial institution no longer
25 suspects that financial exploitation has occurred.

26 (3) A report of financial exploitation or suspected financial
27 exploitation made by a financial institution, or by any other
28 person under section 11(3), must include the name of the individual
29 believed to be the victim, a description of the financial

1 exploitation or suspected financial exploitation, and a designated
2 contact for notices required under subsection (4) if the reporter
3 is a financial institution. If a report under this subsection is
4 made by telephone, the law enforcement agency or adult protective
5 services that receives the report must make a written record of the
6 information provided in the telephonic report.

7 (4) Within 4 business days after it receives a report of
8 financial exploitation or suspected financial exploitation from a
9 financial institution under this section, the law enforcement
10 agency or adult protective services that received the report must
11 provide written notification to the designated contact of the
12 financial institution that clearly indicates whether a reported
13 incident is under investigation or has been referred to a law
14 enforcement agency for investigation. As soon as practicable after
15 the investigation, the law enforcement agency or adult protective
16 services shall notify the financial institution of the disposition
17 of the reported incident.

18 (5) Within 5 business days after it receives a report of
19 financial exploitation or suspected financial exploitation from a
20 financial institution under this section, a law enforcement agency
21 or adult protective services must notify the office of the county
22 prosecutor. Notification must be made in a manner prescribed by the
23 attorney general and must include, at a minimum, a copy of each
24 report submitted to or committed to written form by the law
25 enforcement agency or adult protective services and the response
26 to, or actions taken based on, the report by the law enforcement
27 agency or adult protective services.

28 (6) If a financial institution that attempts to make a report
29 of financial exploitation or suspected financial exploitation under

1 this section is unable to communicate with a law enforcement agency
2 or adult protective services to make the report, or if the law
3 enforcement agency or adult protective services that receives a
4 report under this act fails to provide notification to the
5 financial institution under subsection (4), the financial
6 institution may notify the office of the county prosecutor.
7 Notification under this subsection must be made in a manner
8 prescribed by the attorney general.

9 (7) A law enforcement agency, adult protective services, or
10 county prosecutor must not disclose the identity of an individual
11 or financial institution that makes a report of financial
12 exploitation or suspected financial exploitation without the
13 consent of the individual or financial institution. However, this
14 subsection does not apply to a disclosure that is made by adult
15 protective services to a law enforcement agency or by a law
16 enforcement agency or adult protective services to the county
17 prosecutor as required under subsection (5), or a disclosure
18 required in a civil or criminal proceeding. A law enforcement
19 agency, adult protective services, or county prosecutor shall not
20 disclose the identity, or personal or account information, of an
21 individual that is the subject of a report of financial
22 exploitation or suspected financial exploitation as a victim
23 without that individual's consent, except as required under
24 subsection (5) or as required in a civil or criminal proceeding.

25 (8) The identity of an individual or financial institution
26 that makes a report of financial exploitation or suspected
27 financial exploitation under this section is exempt from disclosure
28 under section 13(1)(b)(iv) or (1)(d) of the freedom of information
29 act, 1976 PA 442, MCL 15.243. The identity of an individual that is

1 the suspected or confirmed victim of financial exploitation or his
2 or her personal or account information is exempt from disclosure
3 under section 13(1)(a), (1)(b)(iii), or (1)(d) of the freedom of
4 information act, 1976 PA 442, MCL 15.243. This subsection does not
5 limit the applicability of any other exceptions to disclosure under
6 section 13 of the freedom of information act, 1976 PA 442, MCL
7 15.243, to all or any part of a report made under this act.

8 Sec. 7. (1) Except as otherwise provided in this subsection,
9 if a financial institution suspects or finds financial exploitation
10 of a member or customer by another individual through deception,
11 manipulation, coercion, intimidation, or improper leveraging of a
12 caregiver relationship, the financial institution must, if
13 possible, delay the related transaction for further investigation
14 or examination of available facts. If the financial institution
15 still suspects or has found financial exploitation of the member or
16 customer after an investigation or examination of available facts,
17 the financial institution must either continue the delay of related
18 transactions under this subsection or place a freeze on any
19 transactions or assets related to that individual's accounts,
20 individually or jointly held, under this subsection, if that action
21 by the financial institution is authorized under the terms of an
22 account or service agreement between the financial institution and
23 the member or customer. If there is not an applicable account or
24 service agreement between the financial institution and the member
25 or customer, the financial institution may delay an individual
26 transaction or place a freeze on any transactions or assets
27 relative to that member's or customer's accounts, individually or
28 jointly held, for up to 5 business days, or according to the terms
29 of any applicable court order. The financial institution is not

1 required to delay or freeze any transactions if it no longer
2 suspects financial exploitation after an investigation or
3 examination of available facts; or if a determination to delay or
4 freeze any transactions is not sufficiently supported by available
5 facts, would jeopardize the safety of any employees, members, or
6 customers of the financial institution, or would interfere with an
7 ongoing law enforcement investigation.

8 (2) If a financial institution is informed by a law
9 enforcement agency or adult protective services under section 5(4)
10 that financial exploitation or suspected financial exploitation
11 that has been reported is under investigation, the financial
12 institution may extend the term of a transaction delay or freeze
13 under this section. However, the financial institution shall not
14 extend a transaction delay or freeze beyond the date the financial
15 institution is informed of the disposition of the reported
16 incident.

17 (3) A financial institution may provide for the processing of
18 transactions that it determines are necessary to preserve the
19 health, safety, or financial well-being of a member or customer
20 during the period of a transaction delay or freeze, unless those
21 transactions are related to the suspected financial exploitation or
22 the financial institution is directed otherwise by court order.

23 Sec. 9. (1) Except as provided in subsections (2) and (3),
24 only the state or federal regulatory agency that authorized the
25 financial institution to organize and commence business in its
26 current form and that has examination and enforcement authority
27 over that financial institution may enforce this act.

28 (2) If a financial institution is organized under the laws of
29 another state or territory of the United States and maintains 1 or

1 more branch offices in this state, only the state regulatory agency
2 of this state that has or shares examination and enforcement
3 authority over the financial institution's operations in this state
4 may enforce this act.

5 (3) In addition to the general authority of a federal
6 regulatory agency described in subsection (1), the Federal Deposit
7 Insurance Corporation or Federal Reserve System may refer a
8 suspected violation of this act discovered under their examination
9 and enforcement authority to an appropriate agency described in
10 subsection (1) or (2) or take appropriate action under their
11 examination and enforcement authority.

12 (4) Except with regard to the examination and enforcement
13 authority of the department of insurance and financial services or
14 a federal regulatory agency described in subsection (1), (2), or
15 (3), a financial institution is immune from any liability or
16 penalty under law or regulation of this state or a local unit of
17 government for an action or process under this act.

18 (5) This act does not create a private right of action against
19 a financial institution, either in law or in equity, for an action
20 or practice under this act.

21 Sec. 11. (1) This act shall not be construed as limiting the
22 responsibilities of a law enforcement agency to enforce the laws of
23 this state or as precluding a law enforcement agency from reporting
24 and investigating, as appropriate, alleged criminal conduct.

25 (2) This act shall not be construed as limiting the ability or
26 authority of a financial institution to take otherwise lawful
27 actions under local, state, or federal law or private agreement; or
28 to report or prevent fraud or other illegal activity related to its
29 operations or the assets of a member or customer that are held by

1 the financial institution.

2 (3) This act shall not be construed as restricting or
3 prohibiting a person, other than an individual who is acting as an
4 employee of a financial institution, that suspects or finds that
5 financial exploitation of an individual has occurred, or is being
6 attempted by another individual through deception, manipulation,
7 coercion, intimidation, or improper leveraging of a caregiver
8 relationship, from making a report to a law enforcement agency or
9 adult protective services.

10 (4) This act shall not be construed as limiting the
11 responsibilities of adult protective services to investigate, as
12 appropriate, alleged abuse of any adult in need of protective
13 services, as that term is defined in section 11(b) of the social
14 welfare act, 1939 PA 280, MCL 400.11.

15 Enacting section 1. This act takes effect 270 days after the
16 date it is enacted into law.