SENATE RECEDED FROM ITS AMENDMENT

May 13, 2021

S. 425

Introduced by Senators Alexander, McLeod, Young and Gustafson

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Read the first time January 12, 2021.

A BILL

TO AMEND ARTICLE 1, CHAPTER 35, TITLE 43 OF THE 1976 CODE, RELATING TO DUTIES AND PROCEDURES OF INVESTIGATIVE ENTITIES CONCERNING ADULT PROTECTION, BY ADDING SECTION 43-35-87, TO AUTHORIZE BANKING INSTITUTIONS TO DECLINE CERTAIN FINANCIAL TRANSACTION REQUESTS IN CASES OF THE SUSPECTED FINANCIAL EXPLOITATION OF A VULNERABLE ADULT, AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 35, Title 43 of the 1976 Code is amended by adding:

"Section 43-35-87. (A) For the purposes of this section, 'financial institution' means any bank, credit union, wealth management institution, or other financial services company. This section excludes a 'broker-dealer' as defined in Section 35-1-102(4) and an 'investment adviser' as defined in Section 35-1-102(15).

(B) If a financial institution reasonably believes that the financial exploitation of a vulnerable adult has occurred or may occur, then the financial institution may, but is not required to, decline or place on hold any transaction involving:

(1) the account of the vulnerable adult;

(2) an account in which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

(3) the account of a person who is suspected of engaging in the financial exploitation of the vulnerable adult.

(C) A financial institution may also decline or place on hold any transaction pursuant to this section if an investigative entity or law enforcement agency provides information to the financial institution demonstrating that it is reasonable to believe that the financial exploitation of a vulnerable adult has occurred or may occur.

(D) A financial institution is not required to decline or place on hold a transaction pursuant to this section. Such a decision is in the financial institution's discretion, based on the information available to the financial institution.

(E)(1) Any financial institution that declines or places on hold a transaction pursuant to this section shall:

(a) make a reasonable effort to provide notice, orally or in writing, to all parties authorized to transact business on the account from which the transfer or disbursement was declined or placed on hold; and

(b) report the incident to the appropriate investigative entity in accordance with Section 43-35-25.

(2) Notwithstanding the provisions of this subsection, a financial institution has no duty to notify any party that is suspected of financial exploitation pursuant to this section.

(F) Any decline or hold of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the financial institution that allowing the transaction will not result in the financial exploitation of a vulnerable adult;

(2) thirty business days after the date on which the financial institution first declined or placed on hold the transaction, unless an appropriate investigative entity as set forth in Section 43-35-10(5) requests that the financial institution extend the delay, in which case the delay shall expire no more than fifty-five business days after the date on which the financial institution first declined or placed on hold the transaction; or

(3) the order of a court of competent jurisdiction.

(G) A financial institution may provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to law enforcement agencies or investigative entities responsible for administering the provisions of this article. Such records may include relevant historical records and recent transactions relating to suspected financial exploitation.

(H) If the determinations and actions of a financial institution or an employee of a financial institution are made in good faith and in accordance with the provisions of this section, then the financial institution or employee shall be immune from criminal, civil, or administrative liability for declining transactions to disburse monies pursuant to this section, and for taking actions in furtherance of a determination, including making a report or providing access to or copies of relevant records to an investigative entity or law enforcement agency. Nothing in this section is intended to nor does it limit or shield in any manner a financial institution from civil liability against any claim, including reasonable attorneys' fees, costs, and litigation expenses, for participating in or materially aiding the financial exploitation of a vulnerable adult. Any such claims shall be asserted by the vulnerable adult, or on his behalf by an appropriate guardian or representative who is not involved in or otherwise suspected of participating in the financial exploitation of the vulnerable adult, by filing a civil action in circuit court."

SECTION 2. Chapter 1, Title 35 of the 1976 Code is amended by adding:

"ARTICLE 8

The Protection of Vulnerable Adults from Financial Exploitation

Section 35-1-800. In this article, unless the context otherwise requires:

(1) 'Agencies' means the Adult Protective Services Program in the Department of Social Services and the Securities Division of the Office of the Attorney General.

(2) 'Eligible adult' means:

(a) a person fifty-five years of age or older; or

(b) a vulnerable adult subject to Section 43-35-10(11).

(3) 'Financial exploitation' means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or property of an eligible adult; or

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

(i) obtain the control, use, or benefit, through deception, intimidation, or undue influence, or by the use of any scheme, device, or artifice to defraud, of the eligible adult's money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of his money, assets, or property; or

(ii) convert the money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of his money, assets, or property.

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

(5) 'Reasonably associated individual' means any person known to a qualified individual to be reasonably associated with an eligible adult or his account.

Section 35-1-810. If a qualified individual reasonably believes that the financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, then the qualified individual may promptly notify the agencies.

Section 35-1-820. A qualified individual who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to Section 35-1-810 shall be immune from any administrative or civil liability that might otherwise arise from such a disclosure or from the failure to notify an eligible adult of such a disclosure.

Section 35-1-830. If a qualified individual reasonably believes that the financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, then the qualified individual may notify any third party previously designated by the eligible adult or, if such a person has not been designated or cannot be contacted, a reasonably associated individual. Disclosure may not be made to any designated third party that is suspected of the financial exploitation or other abuse of the eligible adult.

Section 35-1-840. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35-1-830 shall be immune from any administrative or civil liability that might otherwise arise from such a disclosure.

Section 35-1-850. (A) A broker-dealer or investment adviser may delay a disbursement from, or a transaction in connection with, an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

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

(2) the broker-dealer or investment adviser:

(a) immediately, and in no event more than two business days after the requested disbursement or transaction is delayed, 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 the suspected or attempted financial exploitation of the eligible adult;

(b) immediately, and in no event more than two business days after the requested disbursement or transaction is delayed, notifies the agencies; and

(c) continues an internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and provides status updates to the agencies upon request.

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

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

(2) thirty business days after the date on which the broker-dealer or investment adviser first delayed the requested disbursement or transaction, unless either of the agencies requests that the broker-dealer or investment adviser extends the delay, in which case the delay shall expire no more than fifty-five business days after the date on which the broker-dealer or investment adviser first delayed the disbursement or transaction, unless sooner terminated or extended by either of the agencies or an order of a court of competent jurisdiction.

(C) The Court of Common Pleas may enter an order extending the delay of the disbursement or transaction, or may order other protective relief based on the petition of either of the agencies, the broker-dealer or investment adviser that initiated the delay under this section, or another interested party.

Section 35-1-860. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35-1-850 shall be immune from any administrative or civil liability that might otherwise arise from such delay of a requested disbursement or transaction.

Section 35-1-870. 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 the agencies or to law enforcement, as part of a referral to either the agencies or to 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 the financial exploitation of an eligible adult. All records made available to the agencies under this section are not public records and are not available for public examination. Nothing in this section shall limit or otherwise impede the authority of the Securities Division of the Office of the Attorney General from accessing or examining the books and records of broker-dealers and investment advisers as otherwise provided by law.

Section 35-1-880. Nothing in this article is intended to, nor does it limit or shield in any manner, a qualified individual from civil liability against any claim, including reasonable attorneys' fees, costs, and litigation expenses, for participating in or materially aiding the financial exploitation of an eligible adult. Any such claims shall be asserted by the eligible adult, or on his behalf by an appropriate guardian or representative who is not involved in or otherwise suspected of participating in the financial exploitation of the eligible adult, by filing a civil action in circuit court."

SECTION 3. Section 35-1-607(b) of the 1976 Code is amended by adding an appropriately numbered new item to read:

"( ) a record provided to the Securities Division of the Office of the Attorney General pursuant to Section 35-1-870."

SECTION 4. This act takes effect upon approval by the Governor.

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