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:

Sec. 1. This act shall be known and may be cited as the
"financial exploitation prevention act".

Sec. 3. As used in this act:

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

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

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

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

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

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

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

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

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

(i) A fraudulent or otherwise illegal, unauthorized, or
improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.

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

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

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

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

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

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

(i) Common types of financial exploitation.

(ii) Signs of potential financial exploitation.

(iii) Relevant federal advisory opinions or guidance on elder financial exploitation.
(iv) Internal protocols developed under subdivisions (b) to (e).

(v) Reporting procedures under subdivision (g).

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

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

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

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

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

(g) Except as provided in subsection (2) or as prohibited under federal law, if the financial institution suspects or finds financial exploitation of a member or customer by another individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship, a procedure for reporting that financial exploitation or suspected financial exploitation to a law enforcement agency or adult protective
services. The policy shall require that a report made to adult protective services is made in the manner described in section 11a of the social welfare act, 1939 PA 280, MCL 400.11a, for a report under that section. In determining whether and to what entity to make a report, the policy must, at a minimum, require:

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

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

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

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

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

(3) A report of financial exploitation or suspected financial exploitation made by a financial institution, or by any other person under section 11(3), must include the name of the individual believed to be the victim, a description of the financial
exploitation or suspected financial exploitation, and a designated contact for notices required under subsection (4) if the reporter is a financial institution. If a report under this subsection is made by telephone, the law enforcement agency or adult protective services that receives the report must make a written record of the information provided in the telephonic report.

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

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

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

(7) A law enforcement agency, adult protective services, or
county prosecutor must not disclose the identity of an individual
or financial institution that makes a report of financial
exploitation or suspected financial exploitation without the
consent of the individual or financial institution. However, this
subsection does not apply to a disclosure that is made by adult
protective services to a law enforcement agency or by a law
enforcement agency or adult protective services to the county
prosecutor as required under subsection (5), or a disclosure
required in a civil or criminal proceeding. A law enforcement
agency, adult protective services, or county prosecutor shall not
disclose the identity, or personal or account information, of an
individual that is the subject of a report of financial
exploitation or suspected financial exploitation as a victim
without that individual's consent, except as required under
subsection (5) or as required in a civil or criminal proceeding.

(8) The identity of an individual or financial institution
that makes a report of financial exploitation or suspected
financial exploitation under this section is exempt from disclosure
under section 13(1)(b)(iv) or (1)(d) of the freedom of information
act, 1976 PA 442, MCL 15.243. The identity of an individual that is
the suspected or confirmed victim of financial exploitation or his or her personal or account information is exempt from disclosure under section 13(1)(a), (1)(b)(iii), or (1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243. This subsection does not limit the applicability of any other exceptions to disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, to all or any part of a report made under this act.

Sec. 7. (1) Except as otherwise provided in this subsection, if a financial institution suspects or finds financial exploitation of a member or customer by another individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship, the financial institution must, if possible, delay the related transaction for further investigation or examination of available facts. If the financial institution still suspects or has found financial exploitation of the member or customer after an investigation or examination of available facts, the financial institution must either continue the delay of related transactions under this subsection or place a freeze on any transactions or assets related to that individual's accounts, individually or jointly held, under this subsection, if that action by the financial institution is authorized under the terms of an account or service agreement between the financial institution and the member or customer. If there is not an applicable account or service agreement between the financial institution and the member or customer, the financial institution may delay an individual transaction or place a freeze on any transactions or assets relative to that member's or customer's accounts, individually or jointly held, for up to 5 business days, or according to the terms of any applicable court order. The financial institution is not
required to delay or freeze any transactions if it no longer suspects financial exploitation after an investigation or examination of available facts; or if a determination to delay or freeze any transactions is not sufficiently supported by available facts, would jeopardize the safety of any employees, members, or customers of the financial institution, or would interfere with an ongoing law enforcement investigation.

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

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

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

(2) If a financial institution is organized under the laws of another state or territory of the United States and maintains 1 or
more branch offices in this state, only the state regulatory agency
of this state that has or shares examination and enforcement
authority over the financial institution's operations in this state
may enforce this act.

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

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

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

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

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

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

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

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