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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3833

03/15/2018 Authored by Schomacker; Halverson; Barr, R.; Loonan; Theis and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; providing financial exploitation protections for older adults
1.3 and vulnerable adults; proposing coding for new law as Minnesota Statutes, chapter
1.4 45A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. 45A.01 DEFINITIONS.

1.7 Subdivision 1. Scope and application. For purposes of this chapter and unless the
1.8 context otherwise requires, the terms in this section have the meanings given them.

1.9 Subd. 2. Agencies. "Agencies" means the common entry point and the commissioner
1.10 of commerce collectively.

1.11 Subd. 3. Agent. "Agent" has the meaning given in section 80A.41.

1.12 Subd. 4. Broker-dealer. "Broker-dealer" has the meaning given in section 80A.41.

1.13 Subd. 5. Common entry point. "Common entry point" has the meaning given in section
1.14 626.5572, subdivision 5.

1.15 Subd. 6. Eligible adult. "Eligible adult" means:

1.16 (1) a person 65 years of age or older; or

1.17 (2) a person subject to section 626.5572, subdivision 21.

1.18 Subd. 7. Financial exploitation. "Financial exploitation" means:

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

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

2.3 (i) obtain control, through deception, intimidation, or undue influence, over the eligible  
 2.4 adult's money, assets, or property to deprive the eligible adult of the ownership, use, benefit,  
 2.5 or possession of the eligible adult's money, assets, or property; or

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

2.8 Subd. 8. **Investment adviser.** "Investment adviser" has the meaning given in section  
 2.9 80A.41.

2.10 Subd. 9. **Investment adviser representative.** "Investment adviser representative" has  
 2.11 the meaning given in section 80A.41.

2.12 Subd. 10. **Lead investigative agency.** "Lead investigative agency" has the meaning  
 2.13 given in section 626.5572, subdivision 13.

2.14 Subd. 11. **Qualified individual.** "Qualified individual" means an agent, investment  
 2.15 adviser representative, or person who serves in a supervisory, compliance, or legal capacity  
 2.16 for a broker-dealer or investment adviser.

2.17 **Sec. 2. [45A.02] GOVERNMENTAL DISCLOSURES.**

2.18 If a qualified individual reasonably believes that financial exploitation of an eligible  
 2.19 adult may have occurred, may have been attempted, or is being attempted, the qualified  
 2.20 individual shall immediately notify the agencies.

2.21 **Sec. 3. [45A.03] IMMUNITY FOR GOVERNMENTAL DISCLOSURES.**

2.22 A qualified individual who, in good faith and exercising reasonable care, makes a  
 2.23 disclosure of information pursuant to section 45A.02 or testifies about alleged financial  
 2.24 exploitation of an eligible adult in a judicial or administrative proceeding is immune from  
 2.25 administrative or civil liability that might otherwise arise from the disclosure or testimony  
 2.26 or for failure to notify the customer of the disclosure or testimony.

2.27 **Sec. 4. [45A.04] THIRD-PARTY DISCLOSURES.**

2.28 If a qualified individual reasonably believes that financial exploitation of an eligible  
 2.29 adult may have occurred, may have been attempted, or is being attempted, a qualified  
 2.30 individual may notify a third party previously designated by the eligible adult. Disclosure

3.1 may not be made to a designated third party that is suspected of financial exploitation or  
3.2 other abuse of the eligible adult.

3.3 **Sec. 5. [45A.05] IMMUNITY FOR THIRD-PARTY DISCLOSURES.**

3.4 A qualified individual who, in good faith and exercising reasonable care, complies with  
3.5 section 45A.04 is immune from administrative or civil liability that might otherwise arise  
3.6 from the disclosure.

3.7 **Sec. 6. [45A.06] DELAYING DISBURSEMENTS.**

3.8 (a) A broker-dealer or investment adviser may delay a disbursement from an account  
3.9 of an eligible adult or an account on which an eligible adult is a beneficiary if:

3.10 (1) the commissioner of commerce, the lead investigative agency, law enforcement, or  
3.11 the prosecuting attorney's office provides information to the broker-dealer or investment  
3.12 adviser demonstrating that it is reasonable to believe that financial exploitation of an eligible  
3.13 adult may have occurred, may have been attempted, or is being attempted; or

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

3.18 (3) the broker-dealer or investment adviser:

3.19 (i) immediately, but in no event more than two business days after the requested  
3.20 disbursement, provides written notification of the delay and the reason for the delay to all  
3.21 parties authorized to transact business on the account, unless the party is reasonably believed  
3.22 to have engaged in suspected or attempted financial exploitation of the eligible adult;

3.23 (ii) immediately, but in no event more than two business days after the requested  
3.24 disbursement, notifies the agencies; and

3.25 (iii) continues its internal review of the suspected or attempted financial exploitation of  
3.26 the eligible adult, as necessary, and reports the investigation's results to the agencies within  
3.27 seven business days after the requested disbursement.

3.28 (b) A delay of a disbursement as authorized by this section expires upon the sooner of:

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

4.1 (2) 15 business days after the date on which the broker-dealer or investment adviser first  
4.2 delayed disbursement of the funds, unless either of the agencies requests that the  
4.3 broker-dealer or investment adviser extend the delay, in which case the delay expires no  
4.4 more than 25 business days after the date on which the broker-dealer or investment adviser  
4.5 first delayed disbursement of the funds unless sooner terminated by either of the agencies  
4.6 or an order of a court of competent jurisdiction.

4.7 (c) A court of competent jurisdiction may enter an order extending the delay of the  
4.8 disbursement of funds or may order other protective relief based on the petition of the  
4.9 commissioner of commerce, lead investigative agency, broker-dealer or investment adviser  
4.10 that initiated the delay under this section, or other interested party.

4.11 **Sec. 7. [45A.07] IMMUNITY FOR DELAYING DISBURSEMENTS.**

4.12 A broker-dealer or investment adviser that, in good faith and exercising reasonable care,  
4.13 complies with section 45A.06 is immune from administrative or civil liability that might  
4.14 otherwise arise from the delay in a disbursement in accordance with this section.

4.15 **Sec. 8. [45A.08] RECORDS.**

4.16 A broker-dealer or investment adviser shall provide access to or copies of records that  
4.17 are relevant to the suspected or attempted financial exploitation of an eligible adult to  
4.18 agencies charged with administering state adult protective services laws and to law  
4.19 enforcement, either as part of a referral to the agency or to law enforcement, or upon request  
4.20 of the agency or law enforcement pursuant to an investigation. The records may include  
4.21 historical records as well as records relating to the most recent transaction or transactions  
4.22 that may comprise financial exploitation of an eligible adult. Records made available to  
4.23 agencies under this section are classified as private data on individuals or nonpublic data  
4.24 as those terms are defined in section 13.02, unless the records are part of an active civil  
4.25 investigation and classified as confidential or protected nonpublic under section 13.39.  
4.26 Nothing in this provision limits or otherwise impedes the authority of the commissioner of  
4.27 commerce to access or examine the books and records of broker-dealers or investment  
4.28 advisers as otherwise provided by law.