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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
03/28/2018 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices Policy

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, the terms in this
1.8 section have the meanings given them.

1.9 Subd. 2. Broker-dealer. "Broker-dealer" has the meaning given in section 80A.41.

1.10 Subd. 3. Commissioner. "Commissioner" means the commissioner of commerce.

1.11 Subd. 4. Common entry point. "Common entry point" has the meaning given in section
1.12 626.5572, subdivision 5.

1.13 Subd. 5. Eligible adult. "Eligible adult" means:

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

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

1.16 Subd. 6. Financial exploitation. "Financial exploitation" means:

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

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

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

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

2.6 Subd. 7. **Investment adviser.** "Investment adviser" has the meaning given in section
2.7 80A.41.

2.8 Subd. 8. **Lead investigative agency.** "Lead investigative agency" has the meaning given
2.9 in section 626.5572, subdivision 13.

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

2.11 If a broker-dealer or investment adviser reasonably believes that financial exploitation
2.12 of an eligible adult may have occurred, may have been attempted, or is being attempted,
2.13 the broker-dealer or investment adviser may promptly notify the commissioner and the
2.14 common entry point.

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

2.16 A broker-dealer or investment adviser who, in good faith, makes a disclosure of
2.17 information pursuant to section 45A.02, cooperates with a civil or criminal investigation of
2.18 financial exploitation of an eligible adult, or testifies about alleged financial exploitation
2.19 of an eligible adult in a judicial or administrative proceeding is immune from administrative
2.20 or civil liability that might otherwise arise from the disclosure or testimony or for failure
2.21 to notify the customer of the disclosure or testimony.

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

2.23 If a broker-dealer or investment adviser reasonably believes that financial exploitation
2.24 of an eligible adult may have occurred, may have been attempted, or is being attempted, a
2.25 broker-dealer or investment adviser may notify a third party reasonably associated with the
2.26 eligible adult or any other person permitted under state or federal law or rule, rules of a
2.27 self-regulating organization, or customer agreement. Disclosure may not be made to a third
2.28 party that is suspected of financial exploitation or other abuse of the eligible adult.

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

3.2 A broker-dealer or investment adviser who, in good faith, complies with section 45A.04
3.3 is immune from administrative or civil liability that might otherwise arise from the disclosure.

3.4 Sec. 6. [45A.06] DELAYING DISBURSEMENTS.

3.5 (a) A broker-dealer or investment adviser shall delay a disbursement from or place a
3.6 hold on a transaction involving an account of an eligible adult or an account on which an
3.7 eligible adult is a beneficiary if the commissioner of commerce, law enforcement agency,
3.8 or the prosecuting attorney's office provides information to the broker-dealer or investment
3.9 adviser demonstrating that it is reasonable to believe that financial exploitation of an eligible
3.10 adult may have occurred, may have been attempted, or is being attempted. A broker-dealer
3.11 or investment adviser may delay a disbursement from or place a hold on a transaction
3.12 involving an account of an eligible adult or an account on which an eligible adult is a
3.13 beneficiary if:

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

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

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

3.24 (ii) immediately, but in no event more than two business days after the delayed
3.25 disbursement or transaction, notifies the commissioner and the common entry point; and

3.26 (iii) provides documentation and updates of any internal review conducted by the
3.27 broker-dealer or investment adviser upon request of the commissioner, lead investigative
3.28 agency, law enforcement agency, or the prosecuting attorney's office.

3.29 (b) A delay of a disbursement or hold on a transaction as authorized by this section
3.30 expires upon the sooner of:

4.1 (1) a determination by the broker-dealer or investment adviser that the disbursement or
4.2 transaction will not result in financial exploitation of the eligible adult if the broker-dealer
4.3 or investment adviser initiated the delay of disbursement or hold on the transaction;

4.4 (2) a determination by the commissioner, law enforcement agency, lead investigative
4.5 agency, or prosecuting attorney's office that the disbursement or transaction will not result
4.6 in financial exploitation of the eligible adult; or

4.7 (3) 15 business days after the date on which the broker-dealer or investment adviser first
4.8 delayed disbursement of the funds or held the transaction, unless the commissioner, law
4.9 enforcement agency, lead investigative agency, or prosecuting attorney's office requests
4.10 that the broker-dealer or investment adviser extend the delay or hold, in which case the
4.11 delay or hold expires no more than 25 business days after the date on which the broker-dealer
4.12 or investment adviser first delayed disbursement or placed the hold on the transaction unless
4.13 sooner terminated or extended by the commissioner, law enforcement agency, lead
4.14 investigative agency, or prosecuting attorney's office or an order of a court of competent
4.15 jurisdiction.

4.16 (c) A court of competent jurisdiction may enter an order extending the delay of the
4.17 disbursement of funds or hold on the transaction or may order other protective relief based
4.18 on the petition of the commissioner of commerce, lead investigative agency, broker-dealer
4.19 or investment adviser, or other interested party that initiated the delay or hold under this
4.20 section.

4.21 (d) Provided that a broker-dealer or investment adviser's internal review of the suspected
4.22 or attempted financial exploitation of the eligible adult supports the broker-dealer or
4.23 investment adviser's reasonable belief that financial exploitation of the eligible adult has
4.24 occurred, has been attempted, or is being attempted, the temporary delay or hold may be
4.25 extended by the broker-dealer or investment adviser for no longer than ten business days
4.26 following the date authorized by paragraph (b), clause (2), unless otherwise terminated or
4.27 extended by the commissioner, law enforcement agency, lead investigative agency, or
4.28 prosecuting attorney's office or an order of a court of competent jurisdiction.

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

4.30 A broker-dealer or investment adviser that, in good faith, complies with section 45A.06
4.31 or the commissioner of commerce, law enforcement agency, or the prosecuting attorney's
4.32 office is immune from administrative or civil liability that might otherwise arise from the
4.33 delay in a disbursement or placing a hold on a transaction in accordance with this chapter.

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

5.2 A broker-dealer or investment adviser shall provide access to or copies of records that
5.3 are relevant to the suspected or attempted financial exploitation of an eligible adult to the
5.4 lead investigative agency, and to the law enforcement agency, either as part of a referral to
5.5 the lead investigative agency or to the law enforcement agency, or upon request of the lead
5.6 investigative agency or the law enforcement agency pursuant to an investigation. The records
5.7 may include historical records as well as records relating to the most recent transaction or
5.8 transactions that may comprise financial exploitation of an eligible adult. Records made
5.9 available to agencies under this section are classified as private data on individuals or
5.10 nonpublic data as those terms are defined in section 13.02, unless the records are part of an
5.11 active civil investigation and classified as confidential or protected nonpublic under section
5.12 13.39. Nothing in this provision limits or otherwise impedes the authority of the
5.13 commissioner of commerce to access or examine the books and records of broker-dealers
5.14 or investment advisers as otherwise provided by law.

5.15 Sec. 9. **[45A.09] IMMUNITY FOR RECORDS DISCLOSURE.**

5.16 A broker-dealer or investment adviser who, in good faith, complies with section 45A.08,
5.17 is immune from administrative or civil liability that might otherwise arise from the disclosure.