



SPONSOR: Rep. Bolden & Sen. Henry

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 417

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO ADULT PROTECTIVE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 39, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3902 Definitions.

As used in this chapter:

(6) "Elderly person" has the same meaning as defined in section 222 of Title 11.

(910) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. means the illegal or improper use or abuse of a person who is impaired, the resources or rights of the person who is impaired impaired, by another person, whether for profit or other advantage.

(11) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the elderly person or the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the elder person or the vulnerable adult's profit or advantage.

"Financial exploitation" includes, but is not limited to:

a. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an elderly person or a vulnerable adult to obtain or use the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult;

b. The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult; and

c. Obtaining or using an elderly person or a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the elderly person or the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(12) "Financial institution" means any of the following:

a. A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c));

b. An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u));

c. A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r));

d. A broker-dealer, investment advisor or federal covered adviser, as defined in Sections (a)(3), (a)(5) and (a)(8) of the Delaware Securities Act (6 Del. C. Sec. 73-103(a)).

(23) "Vulnerable adult" means an adult who meets the criteria set forth in 11 Del.C. Sec. 1105(c).

§ 3910 Duty to report.

(a) Any person having reasonable cause to believe that an adult person is impaired or incapacitated as defined in § 3902 of this title and is in need of protective services as defined in § 3904 of this title shall report such information to the Department of Health and Social Services in the manner and format published by the Department.

(b) Upon receipt of a report, the Department shall make a prompt and thorough evaluation to determine whether the person named is in need of protective services and what services are needed, unless the Department determines that the report is frivolous or is without a factual basis. The evaluation may include a visit to the person and consultation with others having knowledge of the facts of the particular case. If outside professional assistance is required in order for a caseworker to complete an evaluation, the Department may contract with professionals in order to provide such services.

(c) If an employee of a financial institution has reasonable cause to believe that an elderly person who is an account holder may be subject to past, current or attempted financial exploitation, that employee shall follow any internal written policy, program, plan or procedure adopted by the financial institution for the purpose of establishing protocols for the reporting of past, current or attempted financial exploitation. Said policies, programs, plans or procedures shall require reporting to the Department and, in addition, may allow reporting to agencies such as the Delaware Department of Justice, or the Federal Trade Commission. In addition, said institution shall be empowered to place a hold on a proposed

53 transaction for a period of ten business days following the filing of the report. The proposed transaction can be held another
54 thirty business days at the request of an investigating federal or state agency or if the financial institution has not heard from
55 either the Department of Health and Social Services or the Delaware Department of Justice, or the financial institution may
56 seek injunctive relief from a court of competent jurisdiction.

57 ~~(e)(d)~~ Anyone person or entity participating in good faith in ~~the making of a report~~ reporting or holding or not holding
58 a transaction pursuant to this chapter shall have immunity from any liability, civil, administrative, or criminal that might
59 otherwise exist as a result of reporting or holding or not holding the transaction. ~~And such immunity shall extend to~~
60 ~~participation in any judicial proceeding resulting from such report.~~

SYNOPSIS

This Legislation provides a mechanism for financial institutions to freeze transactions that they suspect are financial exploitation of an elderly person. It requires the financial institution to report the suspected financial exploitation to proper agencies. If DHSS discovers financial exploitation of an elderly person, the banks have clear authority to hold transactions upon receipt of that information. It also updates the definition of exploitation and creates a definition of financial exploitation for any adult who is impaired. It amends the existing immunity provision to provide immunity for holding transactions and eliminates very open ended immunity language that could be claimed as a safe harbor by the person who engaged in any abuse because they cooperate with the investigation.