



SPONSOR: Rep. Bolden & Sen. Sokola
Reps. J. Johnson, Keeley, Kowalko, Wilson; Sen. Ennis

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 162

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE INVESTOR PROTECTION UNIT
AND THE PROTECTION OF VULNERABLE ADULTS.

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

1 Section 1. Amend Section 73-103, Title 6 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows and redesignating accordingly:

3 § 73-103 Definitions.

4 (a) Generally. — When used in this chapter, unless the context otherwise requires:

5 (5) “Eligible Adult” means:

6 a. An “elderly person” as defined in § 222 of Title 11; or

7 b. A “vulnerable adult” as defined in § 1105 of Title 11.

8 (8) “Financial Exploitation” means the illegal or improper use, control over, or withholding of the property,
9 income, resources, or trust funds of the eligible adult by any person or entity for any person’s or entity’s profit or
10 advantage other than for the eligible adult’s profit or advantage. “Financial exploitation” includes, but is not limited to:

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

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

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

21 (19) “Qualified Individual” means any agent, broker-dealer, investment adviser, investment adviser
22 representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment
23 adviser.

Section 2. Amend Subchapter III, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 73-307. Protection of Vulnerable Adults from Financial Exploitation.

(a) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify the Director and Adult Protective Services in accordance with § 3910 of Title 31.

(b) A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) of this section shall be immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

(c) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(d) A qualified individual that, in good faith and exercising reasonable care, complies with subsection (c) of this section shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

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

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

(2) The broker-dealer or investment adviser:

a. Immediately, but in no event more than two business days after the requested disbursement, 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 suspected or attempted financial exploitation of the eligible adult;

b. Immediately, but in no event more than two business days after the requested disbursement, notifies the Director and Adult Protective Services in accordance with § 3910 of Title 31; and

c. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the Director and Adult Protective Services in accordance with § 3910 of Title 31 within seven business days after the requested disbursement.

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

55 a. A determination by the broker-dealer or investment adviser that the disbursement will not result in
56 financial exploitation of the eligible adults; or

57 b. Fifteen business days after the date on which the broker-dealer or investment adviser first delayed
58 disbursement of the funds, unless the Director requests that the broker-dealer or investment adviser extend the
59 delay, in which case the delay shall expire no more than twenty-five business days after the date on which the
60 broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by the
61 Director or an order of a court of competent jurisdiction.

62 (4) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or
63 may order other protective relief based on the petition of the Director, the broker-dealer or investment adviser that
64 initiated the delay, or other interested party.

65 (f) A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with
66 subsection (e) of this section shall be immune from any administrative or civil liability that might otherwise arise from such
67 delay in a disbursement in accordance with this section.

68 (g) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the
69 suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult
70 protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon
71 request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as
72 records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult.
73 All records made available to agencies under this section shall not be considered a public record for purposes of Chapter
74 100 of Title 29. Nothing in this provision shall limit or otherwise impede the authority of the state securities commissioner
75 to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

76 Section 3. This Act shall take effect 90 days after its enactment into law.

SYNOPSIS

This bill mandates reporting to the Director of Investor Protection by a broker-dealer or investment adviser that has a reasonable belief that financial exploitation of an eligible adult has occurred or been attempted. It also enables broker-dealers and investment advisers to delay disbursement from an account of an eligible adult where financial exploitation is suspected.

This also includes definitions of “eligible adult,” “financial exploitation” and “qualified individual” to be inserted into the Securities Act.