

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2064 Session of 2024

INTRODUCED BY HOGAN, LABS, MARCELL, STAATS, TOMLINSON, JOZWIAK, MOUL, HEFFLEY, GILLEN, SCHEUREN, GROVE, GREEN, McNEILL, MULLINS AND MENTZER, FEBRUARY 27, 2024

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 21, 2024

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; and
7 making repeals," providing for financial institutions and
8 fiduciaries.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. The act of November 6, 1987 (P.L.381, No.79),
12 known as the Older Adults Protective Services Act, is amended by
13 adding a chapter to read:

CHAPTER 6

FINANCIAL INSTITUTIONS AND FIDUCIARIES

16 Section 601. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "A person reasonably associated with the older adult." The

1 term includes:

2 (1) an authorized contact provided by an older adult to
3 a financial institution;

4 (2) a fiduciary authorized to manage some or all of the
5 financial affairs of the older adult;

6 (3) a co-owner, additional authorized signatory or
7 beneficiary on an older adult's account;

8 (4) an attorney or financial professional known to
9 represent or have represented, or to assist in the management
10 of the financial affairs of the older adult;

11 (5) a parent, spouse, adult child, sibling or other
12 known family member or close associate of an older adult; or

13 (6) any other person in a position of trust with respect
14 to the older adult as provided by 18 Pa.C.S. § 3922.1(f)
15 (relating to financial exploitation of an older adult or
16 care-dependent person).

17 "Designated representative of a financial institution." An
18 individual provided immunity from suit for disclosing suspected
19 financial exploitation by 12 U.S.C. § 3423 (relating to immunity
20 from suit for disclosure of financial exploitation of senior
21 citizens).

22 "Fiduciary." A guardian, custodian, trustee, agent, personal
23 representative or other person authorized or required to act on
24 behalf of an older adult.

25 "Financial exploitation." As defined in 18 Pa.C.S. § 3922.1.

26 "Financial institution." Any person defined as a "financial
27 institution" under 31 CFR Subt. B Ch. X (relating to Financial
28 Crimes Enforcement Network, Department of the Treasury) that is
29 required to file suspicious activity reports.

30 Section 602. Voluntary reporting of financial exploitation.

1 (a) Reporting.--Notwithstanding any law limiting or
2 prohibiting disclosure, a fiduciary or designated representative
3 of a financial institution having reasonable cause to believe
4 that financial exploitation of an older adult may have occurred,
5 may have been attempted or is being attempted, may report such
6 information to the agency which is the local provider of
7 protective services, or may report the information to a law
8 enforcement agency or the department. A report made to an agency
9 under this subsection shall provide:

- 10 (1) the name, age and address of the older adult;
11 (2) the name and address, if known, of the older adult's
12 guardian or next of kin;
13 (3) the name and address of the financial institution or
14 fiduciary and contact information for the individual
15 submitting the report;
16 (4) the nature of the suspected financial exploitation
17 of the older adult; and
18 (5) any specific comments, observations or other
19 information directly related to the alleged incident, the
20 older adult and suspected perpetrator of the financial
21 exploitation a THE financial institution or fiduciary <--
22 determines is needed to facilitate investigation of the
23 report.

24 (b) Assistance by persons reasonably associated with an
25 older adult.--At the same time a report is made under subsection
26 (a) regarding the older adult, notwithstanding any law limiting
27 or prohibiting disclosure, the fiduciary or designated
28 representative may provide information regarding the report to a
29 person reasonably associated with the older adult sufficient to
30 enable the person to consult with or assist the older adult in

1 avoiding or remedying the suspected financial exploitation, or
2 exercise any fiduciary powers it possesses to protect the older
3 adult, unless the financial institution has reason to believe
4 the person is knowingly engaged in or facilitating the financial
5 exploitation of the older adult.

6 (c) Access to records.--Notwithstanding the provisions of
7 section 304:

8 (1) A report authorized by this section may include, or
9 may be subsequently supplemented by, records of the older
10 adult the financial institution or fiduciary believes are
11 needed to provide protective services to the older adult.

12 (2) If records needed to determine if an older adult
13 subject to a report as authorized by this section are
14 provided by a financial institution or fiduciary as
15 authorized by paragraph (1), and the older adult, or a
16 fiduciary acting on behalf of the older adult, does not
17 provide consent to the agency to access such records, the
18 agency may issue an order, subject to 2 Pa.C.S. Chs. 5 Subch.
19 A (relating to practice and procedure of Commonwealth
20 agencies) and 7 Subch. A (relating to judicial review of
21 Commonwealth agency action), directing the production of such
22 records that relate to the financial transactions of the
23 older adult for a period of time up to 60 days prior to the
24 date of the report and the first reported incident of actual
25 or suspected financial exploitation. Other records shall only
26 be available to the extent provided by section 304.

27 Section 603. Model training program (RESERVED).

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28 The Department of Aging and the Department of Banking and

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29 Securities, in consultation with representatives of the

30 financial services industry, are authorized to jointly develop a

1 ~~model training program for employees of financial institutions~~
2 ~~and fiduciaries regarding:~~

3 ~~(1) the identification of activities that constitute the~~
4 ~~financial exploitation of older adults;~~

5 ~~(2) the recognition of the signs of potential financial~~
6 ~~exploitation of older adults;~~

7 ~~(3) when a fiduciary or a financial institution acting~~
8 ~~through a designated representative may report suspected~~
9 ~~financial exploitation;~~

10 ~~(4) to whom suspected exploitation should be reported;~~

11 ~~(5) the information to be included in a report; and~~

12 ~~(6) the applicable laws, rules and regulations that must~~
13 ~~be followed while reporting suspected financial exploitation.~~

14 Section 604. Voluntary refusal of disbursements and
15 transactions.

16 (a) Reasonable belief.--If a designated representative or
17 other employee of a financial institution or a fiduciary
18 reasonably believes, after initiating an internal review of a
19 disbursement or transaction, that financial exploitation of an
20 older adult may have occurred, may have been attempted or is
21 being attempted, the financial institution or fiduciary may
22 refuse to disburse money, or engage in a transaction, to prevent
23 financial exploitation of an older adult with respect to:

24 (1) an account of the older adult;

25 (2) an account on which the older adult is a
26 beneficiary, including a trust or guardianship account; and

27 (3) an account of a person suspected of perpetrating
28 financial exploitation of an older adult.

29 (b) Request by area agency on aging or law enforcement
30 agency.--In addition to the authorization provided under

1 subsection (a), a financial institution or fiduciary may refuse
2 to disburse money or engage in a transaction with respect to the
3 accounts designated in subsection (a) if an area agency on aging
4 or law enforcement official requests the financial institution
5 or fiduciary to do so or provides information to the financial
6 institution or fiduciary demonstrating that it is reasonable to
7 believe that financial exploitation of an older adult may have
8 occurred, may have been attempted or is being attempted.

9 (c) Discretion.--A financial institution or fiduciary is not
10 required to refuse to disburse money or engage in a transaction
11 as authorized under subsection (a) or (b), but may use its sole
12 discretion to determine whether to refuse to disburse money
13 based on the information available to the financial institution
14 or fiduciary.

15 (d) Duties.--Except as provided under Federal or State law,
16 if a financial institution or fiduciary refuses to disburse
17 money or engage in a transaction as authorized by this section
18 to protect an older adult, the designated representative of the
19 financial institution or the fiduciary shall:

20 (1) make an immediate oral report and file a written
21 report containing the information required for a voluntary
22 report under section 602(a) within two business days;

23 (2) notify the older adult, and if requested provide
24 additional information, in the manner provided for
25 notification by an agency under section 308(a); and

26 (3) within two business days, make a reasonable effort
27 to notify, orally or in writing, each person authorized to
28 transact business on the account, ~~that is a beneficiary of~~ <--
29 ~~the account~~ or that has been authorized by the older adult to
30 receive notifications regarding account activity, except for

1 a person reasonably believed to have engaged in suspected or
2 attempted financial exploitation of the older adult or a
3 payable on death beneficiary designated not to be notified
4 prior to the death of the older adult.

5 (e) Notice of refused disbursement or transaction.--A
6 notification required by subsection (d)(3) shall be sufficient
7 if it:

8 (1) states that the financial institution or fiduciary
9 has temporarily blocked the disbursement of money or delayed
10 the execution of transactions as authorized by this section
11 to protect an older adult from financial exploitation;

12 (2) provides the name of the financial institution or
13 fiduciary and the name and telephone number of a contact
14 person representing the financial institution or fiduciary;
15 and

16 (3) identifies the account or transaction to which the
17 notification applies.

18 (f) Expiration.--Except as provided under subsection (h), a
19 refusal to disburse money or engage in a transaction as
20 authorized by this section shall expire upon the sooner of the
21 following:

22 (1) issuance of a court order directing the financial
23 institution or fiduciary to make the disbursement or engage
24 in the transaction;

25 (2) a determination by the financial institution or
26 fiduciary based on its sole review and discretion to
27 authorize the disbursement or transaction; or

28 (3) ~~15~~ SEVEN business days after the financial
29 institution or fiduciary first refused to disburse the money
30 or engage in the transaction.

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1 (g) Extension of expiration.--A financial institution or
2 fiduciary may extend the expiration date of its refusal as
3 provided in subsection (f) (3) by an additional 25 15 business
4 days if a request is made for a court order as authorized by
5 subsection (h) by a financial institution or fiduciary, or by
6 the local agency on aging, the department or a law enforcement
7 agency to block or extend the refused disbursement or
8 transaction.

9 (h) Order.--A court of competent jurisdiction may enter an
10 order blocking a disbursement or transaction, or further
11 delaying a disbursement or transaction, to protect an older
12 adult from suspected financial exploitation or order other
13 actions to protect the older adult.

14 (i) Recordkeeping.--A request of an area agency on aging or
15 a law enforcement official to terminate or extend a refusal to
16 disburse money or engage in a transaction as authorized by this
17 section shall be documented in writing.

18 Section 605. Standing of financial institutions and
19 fiduciaries.

20 (a) Initiation of proceedings.--If a financial institution
21 or fiduciary has a reasonable cause to believe an older adult is
22 subject to an imminent and substantial risk of financial
23 exploitation, the financial institution or fiduciary may
24 initiate a proceeding in a court of competent jurisdiction to:

25 (1) extend the period of time the disbursement of money
26 or transactions may be refused under section 604, or prohibit
27 specific disbursements or transactions;

28 (2) request an order necessary to protect the accounts
29 or assets of an older adult, or in which the older adult has
30 interests;

1 (3) request the appointment of a conservator or guardian
2 of the estate of an older adult;

3 (4) remove the powers of a fiduciary engaged in the
4 financial exploitation of an older adult;

5 (5) modify an order issued by an area agency on aging or
6 the department issued under this act or other law to protect
7 an older adult from suspected financial exploitation; or

8 (6) grant other appropriate relief.

9 (b) Notice to area agency on aging.--Prior to initiating a
10 proceeding under this subsection, at least 24 hours' prior
11 notice must be given to the area agency on aging for the county
12 in which the proceeding is initiated and an offer made to
13 consult with the agency regarding the proceeding, unless
14 delaying the initiation of the proceeding will threaten an older
15 adult with immediate and irreparable injury pursuant to the
16 standards applicable for an application for special relief
17 before notice of a hearing under Pa.R.C.P Rule 1531 (relating to
18 special relief, injunctions). A copy of a petition initiating a
19 proceeding under this section shall be provided to the area
20 agency on aging for the county in which a proceeding is
21 initiated.

22 (c) Intervention.--

23 (1) The area agency on aging in the county in which a
24 petition is filed under this section and the department
25 shall have a right to intervene as a party to the
26 proceeding.

27 (2) A financial institution or fiduciary shall have the
28 right to intervene as a party to a proceeding initiated by
29 an area agency on aging or the department under this act to
30 provide protective services to an older adult customer of a

1 financial institution or to an individual to whom a
2 fiduciary owns a duty of care.

3 Section 606. Access to reports and communications regarding
4 investigations.

5 Notwithstanding the requirements of section 304, an area
6 agency on aging may disclose and discuss with a financial
7 institution or fiduciary reports of the suspected financial
8 exploitation of an older adult and the results of the
9 investigation of such reports to the extent reasonably necessary
10 to facilitate the financial institution's or fiduciary's
11 decision under section 604 to refuse to disburse money or engage
12 in a transaction or to terminate or seek an extension of its
13 refusal to do so.

14 Section 607. Immunity and defenses.

15 (a) Immunity.--Except as provided under subsection (c), a
16 financial institution or fiduciary and its directors, officers,
17 designated representatives, employees or agents shall not be
18 subject to a claim for damages or other civil or criminal
19 liability for taking or failing to take any action authorized,
20 but not required by this chapter, to:

21 (1) identify and report financial exploitation under
22 section 602(a);

23 (2) notify a person reasonably associated with an older
24 adult under section 602(b);

25 (3) provide access to records and information under
26 sections 602(c)(1) and (2) and 606;

27 (4) refuse to allow the disbursement of funds or a
28 transaction under section 604; or

29 (5) initiate or participate in judicial proceedings
30 under section 605.

1 (b) Additional immunities and defenses.--Notwithstanding any
2 other law to the contrary:

3 (1) The refusal by a financial institution to engage in
4 a transaction authorized under this chapter shall not
5 constitute the wrongful dishonor of an item under 13 Pa.C.S.
6 § 4402 (relating to liability of bank to customer for
7 wrongful dishonor; time of determining insufficiency of
8 account).

9 (2) A reasonable belief that payment of a check will
10 facilitate the financial exploitation of an older adult shall
11 constitute reasonable grounds to doubt the collectability of
12 the item for purposes of 12 U.S.C. Chs. 41 (relating to
13 expedited funds availability) and 50 (relating to check
14 truncation) and 12 CFR Pt. 229 (relating to availability of
15 funds and collection of checks).

16 (c) Limitation.--The immunities and defenses provided under
17 this section shall not apply to a financial institution or
18 fiduciary or a director, officer, designated representative,
19 employee or agent of a financial institution or fiduciary that
20 intentionally or knowingly engages in the financial exploitation
21 of an older adult.

22 Section 608. Electronic records and signatures.

23 Any requirements of this chapter requiring a written request,
24 authorization or report may be satisfied by the use of
25 electronic records and signatures as authorized by the act of
26 December 16, 1999 (P.L.971, No.69), known as the Electronic
27 Transactions Act.

28 Section 2. This act shall take effect in 60 days.