

MODEL ELDER FINANCIAL EXPLOITATION STATUTE—12.17.2024 Draft With 12.16
Working Group Revisions

§ 1. Legislative intent.

- (1) The Legislature recognizes that Depository Institutions, and Investment Advisers have duties imposed by law and by contract to conduct customer-directed transactions in a timely manner, and in accordance with their customers' instructions.
- (2) The Legislature recognizes that customers are increasingly being induced to authorize transactions that are not in their interest.
- (3) It is the intent of the Legislature to:
 - (a) Ensure that Eligible Adults have ready-access to their funds;
 - (b) Provide Depository Institutions, and Investment Advisers with the tools and protections to intervene in customer-directed transactions when, in their discretion, the transaction presents potential significant risk of harm to the customer; and
 - (c) Provide designated state agencies with the tools and information to investigate potential Financial Exploitation.
- (4) The Legislature does not intend to create a duty for Depository Institutions, and Investment Advisers to contravene the valid instructions of their customers and nothing in this chapter creates such a duty.

§ 2. Definitions.

For purposes of this chapter, the terms in this section have the meanings given them as follows:

- (1) Associated Third-Party. "Associated Third-Party" means an individual:
 - (a) Who is a parent, spouse, adult child, sibling, or other family member of an Eligible Adult whom a Depository Institution, and/or Investment Adviser believes is closely associated with the Eligible Adult;
 - (b) Whom an Eligible Adult authorizes the Depository Institution, and/or Investment Adviser to contact;
 - (c) Who is a co-owner, additional authorized signatory, or beneficiary on an Eligible Adult's Account or an agent under a power of attorney; or
 - (d) Who is an attorney, trustee, conservator, guardian or other fiduciary whom a court or a government agency selects to manage some or all of the financial affairs of the Eligible Adult.
- (2) Account. "Account" means any of the following:
 - (a) A contract of deposit of funds between the depositor and a Depository Institution and:
 - (i) The account is a consumer account owned by an Eligible Adult, whether individually or with one or more other persons; or
 - (ii) An Eligible Adult is a beneficiary of the conservatorship account or guardianship account; or

- (iii) The account is a line of credit owned by an Eligible Adult, whether individually or with one or more other persons.
- (b) Any account of a Investment Adviser for which a client or customer has the authority to transact business.
- (3) Depository Institution. “Depository Institution” means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the Department of Banking and Finance, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a subsidiary or affiliate of any such entity; or a trust company organized under the laws of this state.
- (4) Designated State Agency. “Designated State Agency” means the entity responsible for receiving reports of alleged or suspected maltreatment of an Eligible Adult.
- (5) Eligible adult. “Eligible Adult” means:
 - (a) A person 65 years of age or older; or
 - (b) A person 18 years or older who:
 - (i) Has a substantial mental or functional impairment that significantly interferes with their ability to make financial decisions or for whom a guardian or conservator has been appointed under state law (a “Dependent Adult”); and
 - (ii) The Depository Institution, and/or Investment Adviser has actual knowledge that the person is a Dependent Adult.
- (6) Financial Exploitation. “Financial Exploitation” means:
 - (a) The wrongful or unauthorized taking, withholding, appropriation, expenditure, or use of money, assets, or property owned by an Eligible Adult; or
 - (b) An act or omission taken by a person, including through the use of a power of attorney, guardianship, trustee, or conservatorship of an Eligible Adult, to:
 - (i) Obtain control, through deception, intimidation, or undue influence, over the Eligible Adult's money, assets, or property to deprive the Eligible Adult of the ownership, use, benefit, or possession of the Eligible Adult's money, assets, or property; or
 - (ii) Convert money, assets, or property of the Eligible Adult to deprive the Eligible Adult of the ownership, use, benefit, or possession of the Eligible Adult's money, assets, or property.
- (7) Investment Adviser. “Investment Adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing

investment advice to others for compensation. Investment Adviser includes a federal covered Investment Adviser who is registered under the Investment Advisers Act of 1940. The term does not include:

- (a) An Investment Adviser representative;
- (b) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
- (c) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (d) A bank or savings institution or their employees; or
- (e) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of Investment Adviser.

§3. Government Disclosures.

If a Depository Institution, Investment Adviser, and/or their employee(s) believe that Financial Exploitation of an Eligible Adult may have occurred, may have been attempted, or is being attempted, the Depository Institution, Investment Adviser, and/or their employee(s) may promptly notify the Designated State Agency.

§ 4. Authority to Delay, Refuse, or Prevent Certain Activity.

- (1) When, based on information they have individually observed or information they have received from a government agency or a law enforcement agency, a Depository Institution, Investment Adviser, and/or their employee(s) believe that Financial Exploitation of an Eligible Adult may have occurred, may have been attempted, is occurring, or is being attempted, the Depository Institution, Investment Adviser, and/or their employee(s) may, but are not required to:
 - (a) Delay or refuse one or more transactions with or involving the Eligible Adult;
 - (b) Delay or refuse to permit the withdrawal or disbursement of funds contained in the Eligible Adult's Account;
 - (c) Prevent a change in ownership of the Eligible Adult's Account;
 - (d) Prevent a transfer of funds from the Eligible Adult's Account to an account owned wholly or partially by another person;
 - (e) Refuse to comply with instructions given to the Depository Institution, or Investment Adviser by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the Eligible Adult; or
 - (f) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an Eligible Adult at death.
- (2) A Depository Institution, Investment Adviser, and/or their employee(s) are not required to act under subsection (1) of this section when provided with information alleging that Financial Exploitation may have occurred, may have been attempted, is occurring, or is

being attempted, but may use their sole discretion to determine whether or not to act under subsection (1) of this section based on the information available to them at the time.

- (3) The authority to delay a transaction set forth in subsection (1) of this section expires upon the sooner of: (a) thirty business days after the date on which the Depository Institution, and/or Investment Adviser first acted under subsection (1) of this section; (b) when the Depository Institution, and/or Investment Adviser is satisfied in its sole discretion that the transaction or act will not likely result in Financial Exploitation of the Eligible Adult; or (c) upon an order of a court of competent jurisdiction directing the release of funds.
- (4) Unless otherwise directed by order of a court of competent jurisdiction, a Depository Institution, and/or Investment Adviser may extend the duration of a delay under subsection (3) of this section based on a reasonable belief that the Financial Exploitation of an Eligible Adult may continue to occur or continue to be attempted.
- (5) Notwithstanding any other law to the contrary,
 - (a) The refusal to engage in a transaction as authorized under subsection (1) of this section shall not constitute the wrongful dishonor of an item under section 4-402 of the Uniform Commercial Code, as adopted in this State.
 - (b) A reasonable belief that payment of a check will facilitate the Financial Exploitation of an Eligible Adult shall constitute reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R. part 229. Nothing herein, however, requires Depository Institutions, Investment Advisers, and/or their employee(s), to review the checks of Eligible Adults.
 - (c) A delay or refusal to complete a funds transfer request as authorized under subsection (1) of this section does not violate Article 4A of the Uniform Commercial Code, as adopted in this State. Further, if a transaction is delayed under subsection (1) of this section, the payment order is not deemed as received until the hold is removed and the Depository Institution submits the payment order for processing. Funds transfer and payment order have the meaning provided in Article 4A of the Uniform Commercial Code, as adopted in this State.

§ 5. Third-Party Notifications.

- (1) A Depository Institution, Investment Adviser, and/or their employee(s) may notify an Associated Third-Party, if any, if the Depository Institution, Investment Adviser, or their employee(s) believe that the Financial Exploitation of the Eligible Adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.
- (2) A Depository Institution, Investment Adviser, and/or their employee(s), may choose not to notify an Associated Third-Party as described in Subsection (1), if the Depository Institution, Investment Adviser, or employee(s) believe that the third party is, may be, or may have been engaged in the Financial Exploitation of the Eligible Adult.
- (3) When providing information under subsection (1) of this section, a Depository Institution, Investment Adviser, and/or their employee(s) may limit the information provided to disclosing their suspicion that the Eligible Adult may be a victim or target of Financial Exploitation.
- (4) Any disclosure under subsection (1) of this section is exempt from coverage by state privacy laws and/or requirements.

§ 6. Immunity.

- (1) If a Depository Institution, Investment Adviser, and/or their employee(s) make, or choose not to make: a disclosure pursuant to § 3, notify an Associated Third-Party pursuant to §5, or participate in a judicial proceeding, administrative proceeding, or investigation arising from a notification or report, they shall be immune from any civil, criminal, or administrative liability arising from the disclosure, non-disclosure, notification, or participation, unless the Depository Institution, Investment Adviser, or their employee(s) had actual knowledge of Financial Exploitation and acted with a malicious purpose.
- (2) If a Depository Institution, a Investment Adviser, and/or their employee(s) delay, refuse, or prevent a transaction pursuant to § 4, or decide not to delay, refuse, or prevent a transaction pursuant to § 4, they shall be immune from any civil, criminal, or administrative liability resulting from that action or inaction, unless the Depository Institution, Investment Adviser, or their employee(s) acted with actual knowledge of the Financial Exploitation and with intent to assist in the furtherance of such Financial Exploitation.