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An Act To Protect Vulnerable Adults from Financial Exploitation

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA c. 135, sub-c. 8 is enacted to read:

SUBCHAPTER 8

PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

§ 16801. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Eligible adult. "Eligible adult" means:

- A. An individual 65 years of age or older; or
- B. An individual protected under the Adult Protective Services Act.

2. Financial exploitation. "Financial exploitation" means:

- A. The wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property of an eligible adult; or
- B. Any act or omission made by a person, including through the use of a power of attorney, guardianship or conservatorship of an eligible adult, to:

(1) 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

(2) 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.

3. Qualified individual. "Qualified individual" means an agent, investment adviser representative or individual who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser.

§ 16802. Governmental disclosures

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 Department of Health and Human Services and the administrator.

§ 16803. Immunity for governmental disclosures

A qualified individual who in good faith and exercising reasonable care makes a disclosure of information pursuant to section 16802 is immune from any administrative or civil liability that might otherwise arise from the disclosure or for a failure to notify the eligible adult of the disclosure.

§ 16804. Third-party disclosures

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 may notify any 3rd party previously designated by the eligible adult. Disclosure may not be made to any designated 3rd party that is suspected of financial exploitation or other abuse of the eligible adult.

§ 16805. Immunity for 3rd-party disclosures

A qualified individual who in good faith and exercising reasonable care complies with section 16804 is immune from any administrative or civil liability that might otherwise arise from a disclosure under section 16804.

§ 16806. Delaying disbursements

A broker-dealer or investment adviser may delay disbursements in accordance with this section.

1. Disbursement delay authorized. 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 the broker-dealer or investment adviser or a 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 the eligible adult. If a broker-dealer or investment adviser delays a disbursement under this subsection, the broker-dealer or investment adviser shall:

A. Within 2 business days after the requested disbursement, provide written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, except that notification may not be provided to a 3rd party reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

B. Within 2 business days after the requested disbursement, notify the Department of Health and Human Services and the administrator; and

C. Continue the broker-dealer's or investment adviser's internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and report the results of the internal review to the Department of Health and Human Services and the administrator within 7 business days after the requested disbursement.

2. Expiration. A delay of a disbursement as authorized by this section expires upon the sooner of:

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

B. Fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless the Department of Health and Human Services or the administrator requests that the broker-dealer or investment adviser extend the delay, in which case the delay expires no more than 25 business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless terminated earlier by the Department of Health and Human Services or the administrator or by an order of a court of competent jurisdiction.

3. Judicial order. A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on a petition from the Department of Health and Human Services or the administrator or from the broker-dealer or the investment adviser that initiated the delay under this section or from another interested party.

§ 16807. Immunity for delaying disbursements

A broker-dealer or investment adviser that in good faith and exercising reasonable care complies with section 16806 is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement in accordance with section 16806.

§ 16808. Records

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the Department of Health and Human Services and to a law enforcement agency as part of a referral to the department or to a law enforcement agency or upon request of the department or a law enforcement agency pursuant to an investigation. The records may include historical records and records relating to recent transactions that may constitute financial exploitation of an eligible adult. All records made available to agencies under this section are not public records for purposes of Title 1, chapter 13, subchapter 1. Nothing in this section limits or otherwise impedes the authority of the administrator to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

SUMMARY

This bill requires reporting to the Securities Administrator within the Department of Professional and Financial Regulation, Office of Securities and the Department of Health and Human Services by qualified individuals who reasonably believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted or is being attempted. It defines "qualified individual" to mean an agent, an investment adviser representative and a person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser. The bill also:

1. Authorizes broker-dealers and investment advisers who suspect financial exploitation to delay disbursing funds from a vulnerable adult's account;
2. Authorizes disclosure by qualified individuals to 3rd parties in certain instances in which a vulnerable adult has previously designated the 3rd party;
3. Prohibits disclosure to the 3rd party if the qualified individual suspects the 3rd party of the financial exploitation;
4. Provides immunity from administrative and civil liability for actions taken consistent with the law; and
5. Requires that broker-dealers and investment advisers comply with certain requests for information.