OLR Bill Analysis

sSB 1088

AN ACT CONCERNING FINANCIAL EXPLOITATION OF SENIOR CITIZENS.

SUMMARY

This bill authorizes disclosures and other processes by broker-dealers, investment advisors, financial institutions (e.g., banks and credit unions), and probate courts to address the financial exploitation of elderly people and certain others. The bill shields entities that make authorized disclosures from liability in certain cases. It also decreases the evidentiary standard used for determining when ownership of a joint account at a bank or credit union would not vest to the surviving account owners. Additionally, the bill explicitly requires financial institutions to comply with certain federal and state law requirements on providing electronic or paper periodic statements.

EFFECTIVE DATE: October 1, 2023

§ 1 — FINANCIAL EXPLOITATION AND BROKER-DEALERS AND INVESTMENT ADVISORS

The bill expands on the Connecticut Uniform Securities Act's (CUSA) records and financial reports law to address financial exploitation against "eligible adults," which, under the bill, are (1) state residents who are 60 years old or older and (2) adults under the Department of Social Services's (DSS) care or custody.

Under this bill provision, "financial exploitation" is the act or process of taking advantage of an eligible adult by another person or caretaker for a monetary, personal, or other benefit, gain, or profit. It includes the following:

1. any wrongful or unauthorized taking, withholding, appropriation, or use of an eligible adult's money, assets, or

property;

2. any act or omission to obtain control, through deception, intimidation, or undue influence, over an eligible adult's money, assets, or property and deprive the eligible adult of the ownership, use, benefit, or possession of them, including through power of attorney, guardianship, or conservatorship; and

3. converting an eligible adult's money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of them.

The bill alternatively authorizes certain disclosures of financial exploitation and related actions by a broker-dealer and an investment adviser, as defined under the existing CUSA, and by a "qualified person" (i.e., a broker-dealer, investment adviser, broker-dealer agent, or investment adviser agent, as defined under CUSA, and any person serving in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser).

Disclosure Authorizations

The bill allows any qualified person to promptly disclose, in any reasonable manner, to the social services and banking commissioners when he or she has reasonable cause to suspect or believe that financial exploitation of an eligible adult may have occurred, been attempted, or is being attempted, and the basis for this suspicion or belief. A qualified person is further authorized to disclose this financial exploitation to a third party that the eligible adult has designated as a trusted contact person to discuss the eligible adult's financial affairs, so long as the qualified person does not reasonably believe the third party is involved in the financial exploitation or other abuse.

The bill requires investment advisers to maintain records reflecting the name and contact information for any trusted contact person, at least 18 years old, whom an advisory client has designated to be contacted concerning the client's account, except in the case of an institutional account. Under the bill, when a client opens or updates an advisory

account, an investment adviser must disclose that the adviser is authorized to contact the trusted contact person and disclose account information to (1) address possible financial exploitation and (2) confirm the client's current contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney. The disclosure must be in writing and may be in an electronic format. The bill allows an investment adviser to open or maintain an account for a client without a trusted contact person's name and contact information, so long as the adviser makes reasonable efforts to obtain this information.

Under the bill, if a qualified person voluntarily makes the above disclosures to the commissioners or a trusted contact person in good faith and with reasonable care, the qualified person is immune from any administrative or civil liability that might otherwise arise solely from the disclosures or for any failure to notify the customer or client of the disclosure. This immunity does not apply if the qualified person participated in the financial exploitation described in the disclosure. The bill expressly provides that this immunity will not affect existing laws imposing criminal liability (e.g., perjury or fraudulent or malicious reporting).

Temporary Hold

The bill also allows a broker-dealer or investment adviser to place a temporary hold on a disbursement of funds or securities or a transaction in securities from an eligible adult's account, including an account with an eligible adult as a beneficiary, if the broker-dealer or investment adviser reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted.

Within two business days after placing a temporary hold, the broker-dealer or investment adviser must notify all parties authorized to transact business on the account and the trusted contact person, if any, of the hold and reason for it unless (1) a party or trusted contact person is unavailable or (2) the broker-dealer or investment adviser reasonably believes that the party or trusted contact person has engaged, is engaged, or will engage in financial exploitation.

The bill also requires the broker-dealer or investment adviser to immediately initiate an internal review of the facts and circumstances that caused him or her to reasonably believe that financial exploitation has occurred, is occurring, has been attempted, or will be attempted.

Under the bill, a temporary hold must generally expire within 15 business days after it is first placed, but the broker-dealer or investment adviser may extend the hold if the internal review supports it. In these instances, the hold may be extended (1) up to 10 business days or (2) up to 30 business days if the broker-dealer or investment adviser has reported or provided notification about the financial exploitation to a state regulator, agency of competent jurisdiction, or court of competent jurisdiction. However, regardless of the original expiration date or any extensions by a broker-dealer or investment adviser, the bill authorizes state regulators, agencies of competent jurisdiction, and courts of competent jurisdiction to otherwise terminate or extend the hold. The bill expressly provides that nothing in it prevents the social services and banking commissioners and the probate court from sooner terminating or extending the hold upon contemporaneous written notice to the broker-dealer or investment adviser.

Record Sharing

The bill requires registered broker-dealers and investment advisers to provide access to, or copies of, records relevant to suspected or attempted financial exploitation to the banking commissioner and to a law enforcement agency. This must be provided as part of (1) a referral to the commissioner or agency or (2) upon request for an investigation or examination. The bill expressly provides that nothing in it limits or otherwise impedes the banking commissioner's authority to access or examine the books and records of broker-dealers and investment advisers as provided by other applicable law.

The bill exempts all records made available to agencies from the Freedom of Information Act. The bill retains a provision in existing law allowing the banking commissioner to share and exchange information and documents related to the suspected financial exploitation with affected social services regulators.

The bill specifically identifies certain documents as records relevant to a financial exploitation. For broker-dealers, it includes records prescribed under the federal Securities Exchange Act of 1934 and its regulations, as well as applicable self-regulatory organization rules. For investment advisers, the bill classifies the following documentation as relevant:

1. relevant requests for disbursements,
2. documents supporting any disbursement delay,
3. documents supporting the investment adviser's reasonable belief that financial exploitation has occurred or is occurring,
4. the name and title of the person authorizing the disbursement delay,
5. notifications to affected parties, and
6. documents relating to the investment adviser's internal review.

Training

Under the bill, broker-dealers and investment advisers must, consistent with federal law, develop training policies or programs reasonably designed to ensure that a qualified person understands and can effectively carry out the above requirements when necessary.

Additional Immunity

Beyond the immunities provided to a qualified person described above, the bill further makes broker-dealers and investment advisers who, in good faith and with reasonable care, comply with these requirements immune from any administrative or civil liability that might otherwise arise from any action they take that is permitted under the bill.

Federal Preemption

The bill expressly provides that if any part of the provisions described above is preempted by federal law, then federal law will control.

§ 2 — FINANCIAL EXPLOITATION AND FINANCIAL INSTITUTIONS

The bill separately addresses another type of financial exploitation against a state resident who is at least 60 years old (i.e., an "elderly person").

For this population, "financial exploitation" is using, controlling, or withholding an elderly person's property, income, resources, or trust funds by any person or entity, including an elderly person's agent pursuant to a power of attorney, for profit or advantage at the elderly person's expense. It specifically includes acts constituting a breach of fiduciary duty to an elderly person, or forcing, compelling, or exerting undue influence over the elderly person to cause the elderly person to engage in a transaction or disbursement.

Transaction and Disbursement Suspensions

The bill authorizes financial institutions and financial agents to suspend a transaction or disbursement involving an elderly person's account for up to seven business days if either has reasonable cause to believe that the transaction or disbursement may involve, facilitate, result in, or contribute to financial exploitation.

Under the bill, a "transaction" includes providing access to a safe deposit box or any nonpublic personal information of an elderly person. "Nonpublic personal information" is generally personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution (15 U.S.C. § 6809(a)).

Under the bill, a "financial institution" is any Connecticut bank or credit union, any institution that engages in the business of banking or a credit union that is chartered out-of-state, and any subsidiary or affiliate of these entities. A "financial agent" is a financial institution employee who, within the scope of employment, has direct contact with an elderly person or reviews or approves an elderly person's financial documents, records, or transactions. An "account" is a customer asset or liability account (e.g., a safe deposit box), established primarily for

personal, family, or household purposes, that a financial institution holds on an elderly person's behalf.

In addition to these entities, the bill's provisions also apply to national banking associations, federal savings banks, federal savings and loan associations, and institutions chartered or organized as a federal credit union under federal law, to the extent that they have voluntarily implemented these requirements that are not expressly preempted by federal law, rule, regulation, or order.

Following a suspension, the bill allows the elderly person to renew or resume the transaction or disbursement request. The financial institution must honor the request unless it (1) elects to extend the suspension for an additional seven business days for reasonable cause and in accordance with the financial institution's "suspected exploitation policy" (i.e., a written policy for any actions permitted under the bill when financial exploitation of an elderly person is suspected) or (2) cannot process the transaction or disbursement due to an applicable law, court order, regulatory requirement, or private rule to which the financial institution is subject that governs the processing, clearing, or payment of transactions or disbursements.

Financial institutions and financial agents may decline or return the suspended transaction or disbursement if they have reasonable cause to believe they may be subject to any penalty or liability under any law, regulation, or governmental or private rule that governs the processing, clearing, or payment of transactions or disbursements due to the suspension.

If a financial institution has suspended, declined, or returned a transaction or disbursement under the bill, it must do the following:

1. notify all account holders of its action unless the financial institution reasonably believes that an account holder is involved in the suspected financial exploitation or other abuse of the elderly person and

2. notify the trusted contact person, if any, unless this person is

unavailable or the financial institution reasonably believes that he or she has engaged, is engaged, or will engage in financial exploitation.

Under the bill, a "trusted contact person" is someone whom an elderly person identifies and authorizes a financial institution to contact, at the financial institution's option, and to whom the institution may disclose information about the account to (1) address possible financial exploitation, or (2) confirm the account holder's current contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney.

The bill allows financial institutions to ask any holders of an elderly person's account to identify a trusted contact person.

Immunity

Except for instances where a financial agent or any other financial institution employee participated in a suspected financial exploitation, financial agents and financial institutions are immune from any administrative or civil liability under state law for any action permitted under the bill.

However, this immunity only extends to financial institutions if their actions were done in good faith. Under the bill, "good faith" exists under the following circumstances:

1. if the financial agent who decides to take the action has participated in the mandatory training required under existing law to detect potential fraud, exploitation, and financial abuse of elderly people (CGS § 17b-463);

2. if the financial institution has provided prior written or electronic notice, including as part of a deposit account contract or related disclosures, that it has a suspected exploitation policy by which it may suspend transactions or disbursements to an elderly person in whose name the affected account is held (notice provided to any person who holds or is authorized to access the affected account must constitute notice to all other persons who

hold the affected account, and nothing may be construed to require a financial institution to disclose a copy of its suspected exploitation policy to any account holder);

3. the financial institution or financial agent reports the suspected financial exploitation to the DSS commissioner or her designee, unless (a) the financial institution revokes any suspension within two business days or (b) the financial institution reinstitutes and processes any transaction or disbursement it declined or returned within two business days;

4. the financial institution has established a written suspected exploitation policy; and

5. the financial institution retains, for seven years, a record of the suspected financial exploitation, including any reports to social services, regulatory, or law enforcement agencies and supporting documents.

§§ 3 & 4 — FINANCIAL EXPLOITATION AND PROBATE COURTS

The bill allows an elderly person, or his or her legal representative, to petition the probate court to remove a financial hold imposed by a financial institution under the bill.

For this provision, an "elderly person" is an (1) "eligible adult" and an "elderly person" as defined by Sections 1 and 2 of the bill, respectively, and (2) individual who would qualify as either if he or she were a state resident. Additionally, a "financial institution" is a (1) "qualified person" as defined by Section 1 of the bill and any entity employing one and (2) "financial agent" or "financial institution" as defined in Section 2 of the bill. Lastly, a "financial hold" is a financial institution's refusal to (1) complete any transaction, including a "transaction" as defined in Section 2 of the bill, or (2) disburse the proceeds of any transaction upon a deposit account, funds, safe deposit box, securities, or other property in its custody.

Under the bill, the petition to remove a financial hold must be filed in the probate district where the (1) elderly person resides, is domiciled,

or is located at the time the petition is filed or (2) financial institution maintains an office if the elderly person does not reside in Connecticut and is not domiciled or currently located in the state. The petition must include the following information:

1. the elderly person's name, date of birth, and address;
2. the elderly person's conservator or guardian's name and address, if any;
3. the petitioner's name and address;
4. the name and address of the financial institution imposing the financial hold;
5. whether DSS is known to be investigating the elderly person's welfare;
6. whether a petition to appoint a conservator or guardian is pending in any court;
7. a description of the transaction subject to the financial hold; and
8. a statement as to why the transaction will not result in financial exploitation of the elderly person.

The bill requires the probate court to give notice of the hearing on the petition by regular mail to the DSS commissioner and each elderly person, conservator or guardian, petitioner, and financial institution identified in the petition. The hearing must be held within 10 days of receiving the petition unless continued by the probate court for cause shown.

The probate court must order the financial hold released if it (1) determines that there is no reasonable cause to conclude that the transaction or disbursement subject to the hold may involve, facilitate, result in, or contribute to the financial exploitation of the elderly person or (2) finds that the elderly person is not a Connecticut resident. If the probate court determines there is reasonable cause for the hold, it may

order that it be continued or modified for up to 30 days from the date of the order or until a conservator or guardian is appointed for the elderly person, whichever occurs first.

However, regardless of the above, the probate court with jurisdiction over a pending or current conservatorship of an elderly person's estate may, on the petition of a party related to the conservatorship, order the release, continuation, or modification of a financial hold on any terms the probate court deems appropriate.

The bill establishes a $250 probate court fee when filing to release a financial hold imposed by a financial institution on an "eligible adult," as defined in Section 1 of the bill. Once a financial hold petition has been disposed, the probate court may order that the petitioner be reimbursed for this filing fee as the court deems equitable, so long as no financial agent is made responsible for the reimbursement and a financial institution is only liable if the court finds the financial institution did not have reasonable cause to believe that a transaction or disbursement involving the elderly person's account may have involved, facilitated, resulted in, or contributed to his or her financial exploitation.

§ 5 — JOINT BANK ACCOUNT OWNERSHIP

By law, there is a rebuttable presumption that creating a joint account is evidence of intent by the person creating the account to have it vest, if he or she dies, to any other account holders. Current law requires someone challenging the survivor's right to account ownership to show clear and convincing contrary evidence or that there was fraud or undue influence. The bill replaces the clear and convincing evidentiary standard with preponderance of the evidence, which is a lower legal standard (see BACKGROUND).

§ 6 — FINANCIAL INSTITUTIONS' PERIODIC STATEMENTS

The bill requires financial institutions to comply with certain provisions in three federal and state laws that apply to them regarding periodic statements to consumers.

Specifically, the institutions must do the following, as required by the

federal Electronic Signatures in Global and National Commerce Act:

1. only provide periodic statements in electronic form to consumers after the consumers consent to receive them in that format,

2. allow consumers to withdraw their consents, and

3. provide paper copies of any electronic statements when requested by consumers (15 U.S.C. § 7001 et seq.).

They must also comply with the Connecticut Uniform Electronic Transactions Act (CGS § 1-266 et seq., which provides uniform rules for electronic commerce transactions) and the federal Truth in Savings Act (12 U.S.C. § 4301 et seq., which, among other things, requires uniform disclosure of interest rate and fee information) before providing consumers with electronic periodic statements.

BACKGROUND

Evidentiary Standards

A "preponderance of the evidence" means that it is more likely than not that the facts asserted are true. It is the burden of proof in most civil trials. "Clear and convincing" means that it is highly probable or reasonably certain. Clear and convincing is a greater burden of proof than preponderance of the evidence, but less than evidence beyond a reasonable doubt, which is the standard in criminal trials (Black's Law Dictionary, 11th ed.).

COMMITTEE ACTION

Banking Committee

Joint Favorable
Yea 12 Nay 0 (03/07/2023)