PA 23-161—sSB 1088
Banking Committee
Judiciary Committee

AN ACT CONCERNING FINANCIAL EXPLOITATION OF SENIOR CITIZENS

SUMMARY: This act addresses the financial exploitation of "eligible adults" (i.e., state residents ages 60 or older) by authorizing related disclosures and other processes, including temporary account holds and suspensions, by broker-dealers, investment advisors, and financial institutions (e.g., banks and credit unions). The act shields entities that make authorized disclosures from liability in certain cases. It also creates specific procedures and limits on account holds and suspensions, including on extensions, and a way to petition the probate courts to remove them (§§ 1-4).

Relatedly, the act expressly does not limit immunities, causes of action, or remedies provided under the Connecticut Uniform Power of Attorney Act. It also requires the Department of Social Services (DSS) commissioner to consider any funds or securities subject to a temporary hold or suspension to be unavailable assets for each account owner or co-owner while the hold is in effect if he or she is applying for or receiving specified means-tested benefits under the state's social services laws (§§ 1 & 2).

Additionally, the act (1) lowers 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 (§ 5) and (2) explicitly requires financial institutions to comply with certain federal and state law requirements on providing electronic or paper periodic statements (§ 6).

EFFECTIVE DATE: July 1, 2024, except the provisions on determining joint account ownership and providing electronic or paper periodic statements are effective October 1, 2023.

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

The act expands the Connecticut Uniform Securities Act's (CUSA) records and financial reports provisions to address financial exploitation against eligible adults. Under the act, "financial exploitation" is 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 a power of attorney (POA), 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.

However, the act 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 act 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 may also disclose this financial exploitation to a third party that the eligible adult 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. Under the act, a "trusted contact person" is someone at least age 18 whom an eligible adult identifies and authorizes a qualified person to, at that person's option, contact and disclose account information to (1) address possible financial exploitation or (2) confirm the account holder's current contact information or health status, or the identity of any conservator, executor, trustee, or holder of a POA.

If a qualified person voluntarily makes the above disclosures to the commissioners or a trusted contact person in good faith and with reasonable care, then the act immunizes the qualified person 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 act expressly provides that this immunity will not affect existing laws imposing criminal liability (e.g., perjury or fraudulent or malicious reporting).

The act requires investment advisers to maintain records reflecting the name and contact information for any trusted contact person whom an advisory client has designated to be contacted concerning the client's account, except for institutional accounts. Under the act, 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 POA. The disclosure must be in writing and may be in an electronic format. The act 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.

Temporary Hold

The act also allows a broker-dealer or investment adviser to place a temporary hold on a disbursement of funds or securities or a securities transaction 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, about 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 act 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 act, 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 probate court. However, regardless of the original expiration date or any extensions by a broker-dealer or investment adviser, the act authorizes state regulators, agencies of competent jurisdiction, and probate courts to otherwise terminate or extend the hold.

Additionally, if the broker-dealer or investment adviser receives a new disbursement or transaction request that is subject to a temporary hold through a POA purportedly executed by the eligible adult, the hold must extend to any allowable longer time period under the Connecticut Uniform Power of Attorney Act to receive additional information to determine the POA's acceptability (i.e., five to seven business days). If the longer period of time has expired or the informational review is complete and the broker-dealer or investment adviser does not accept the POA, the temporary hold may be further continued for up to 50 days after the date on which the POA was received.

The act also expressly provides that nothing in it prevents the social services commissioner, banking commissioner, or the probate court from sooner terminating or extending the hold upon contemporaneous written notice to the broker-dealer or investment adviser.

Record Sharing

The act requires registered broker-dealers and investment advisers to give the banking commissioner and law enforcement agencies access to, or copies of, records relevant to suspected or attempted financial exploitation. This must be provided (1) as part of a referral to the commissioner or a law enforcement agency or (2) upon the commissioner's or agency's request for an investigation or examination. The act 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.

Under the act, all records made available to agencies are exempt from the Freedom of Information Act. It also allows the banking commissioner to share and exchange information and documents related to the suspected financial exploitation with affected social services regulators in the same manner as existing law allows him to do so in certain other circumstances.

The act 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 who are or must be registered with the commissioner, the act 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 act, 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, including training on the Connecticut Uniform Power of Attorney Act and how it relates to financial exploitation.

Additional Immunity

Beyond the immunities provided to a qualified person described above, the act 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 allowed under the act.

§ 2 — FINANCIAL EXPLOITATION AND FINANCIAL INSTITUTIONS

The act separately addresses another type of financial exploitation against eligible adults, which the act defines as using, controlling, or withholding an eligible adult's property, income, resources, or trust funds by any person or entity, including an eligible adult's agent under a POA, for profit or advantage at the eligible adult's expense. It specifically includes acts constituting a breach of fiduciary duty to an eligible adult, or forcing, compelling, or exerting undue influence over the person to cause them to conduct a transaction or disbursement.

Transaction and Disbursement Suspensions

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

Under the act, a "transaction" includes providing access to a safe deposit box or any eligible adult's "nonpublic personal information," as defined under federal law. A "financial institution" is any Connecticut-chartered 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 eligible adult or reviews or approves an eligible adult'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 eligible adult's behalf.

In addition to these entities, the act's provisions 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 act allows the eligible adult to renew or resume the transaction or disbursement request. The financial institution must honor the request unless it (1) chooses to extend the suspension for an additional 45 business days for reasonable cause and in accordance with the act or (2) cannot process the transaction or disbursement due to an applicable law, court order, regulatory requirement, or private rule.

Additionally, if the financial institution receives a new disbursement or transaction request that is subject to a suspension through a POA purportedly executed by the eligible adult, the hold must extend to any allowable longer time period under the Connecticut Uniform Power of Attorney Act to receive additional information to determine the POA's acceptability (i.e., five to seven business days). If the longer period of time expires or the informational review is complete and the financial institution does not accept the POA, the suspension may be continued for up to 50 days after the date on which the POA was received.

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 act, it must notify all account holders about the action unless it reasonably believes that an account holder is involved in the suspected financial exploitation or other abuse of the eligible adult.

Additionally, if a financial institution extends a suspension, it must give written notice about the extension to the eligible adult and to each account holder, signatory, and trusted contact person within three business days after the date the extension begins, unless any are suspected of being involved in the financial exploitation. This notice may include a disclosure of other remedies the eligible adult may pursue to release the suspension, but must include the following:

1. the name of the financial institution,
2. the name and contact information of the financial institution's employee or agent responsible for the suspension,
3. a statement that the suspension is extended based on suspected financial exploitation of the eligible adult,
4. the latest date on which the extended suspension will expire, and
5. a statement that the eligible adult may petition the probate court for an order releasing the suspension.

Under the act, a "trusted contact person" is someone at least age 18 whom an eligible adult identifies and authorizes a financial institution to contact, at its option, and to whom it 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 conservator, executor, trustee, or holder of a POA.

Financial institutions may allow any of their customers who are eligible adults to designate, for each account they wholly or partly own, at least one trusted contact person other than a co-owner, beneficiary, or fiduciary on the account. For each designation, the eligible adult must provide the trusted contact person's name, mailing address, and any other contact information. Under the act, financial institutions:

1. must maintain this information in a record associated with each account that the designation applies to,
2. may establish reasonable procedures to confirm the trusted contact person's identity, and
3. cannot require a designated individual's consent to be a trusted contact person as a precondition of recording him or her as such in the account's records.

Immunity

Unless 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

allowed under the act. However, for financial institutions, this immunity only applies to their good faith actions. Under the act, "good faith" exists under the following circumstances:

1. if the financial agent who decides to take the action has participated in the (a) mandatory training required under existing law to detect potential fraud, exploitation, and financial abuse of elderly people; (b) training on the financial institution's "suspected exploitation policy" (i.e., a written policy for any actions allowed under the act when there is suspected financial exploitation of an eligible adult); and (c) training on the Connecticut Uniform Power of Attorney Act and how it relates to financial exploitation to the extent it is not included in the above mandatory training;
2. if the financial institution gives prior written or electronic notice, including as part of a deposit account contract or related disclosures, that it may suspend, decline, or return transactions or disbursements involving an eligible adult's account (notice given to any person who holds or is authorized to access the affected account is notice to all other account holders);
3. the financial institution or financial agent reports the suspected financial exploitation to the DSS commissioner or her designee, unless it (a) revokes any suspension within two business days or (b) reinstitutes and processes any transaction or disbursement it declined or returned within two business days;
4. the financial institution or financial agent makes a reasonable effort to report, verbally or in writing, the suspected financial exploitation to each designated trusted contact person, unless the institution or agent suspects that the person is involved in the suspected financial exploitation;
5. the financial institution has established a written suspected exploitation policy; and
6. 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.

The act specifies that it must not be construed to require a financial institution to disclose a copy of its suspected exploitation policy to any account holder.

Additionally, under the act, a financial institution's or financial agent's reasonable cause to believe that an action requested by an agent under a POA involves financial exploitation of an eligible adult must constitute a good faith belief under the Connecticut Uniform Power of Attorney Act that the agent does not have authority to perform the requested action.

§§ 3 & 4 — FINANCIAL EXPLOITATION AND PROBATE COURTS

The act allows an eligible adult, or his or her authorized legal representative, to petition the probate court to remove a financial hold imposed by a financial institution or a hold by a broker-dealer or investment advisor under the act.

For this provision, a "financial institution" is any Connecticut-chartered 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, as well as any national banking associations, federal savings banks, federal savings and loan associations, and institutions chartered or organized as a federal credit union under federal law. A "financial hold" is a financial institution's refusal to (1) complete any transaction, including a "transaction" as defined under the act (see § 2 above), or (2) disburse the proceeds of a transaction upon a deposit account, funds, safe deposit box, securities, or other property in its custody. A "hold by a broker-dealer or investment advisor" is the temporary hold on a disbursement of funds or securities or a transaction in securities from an eligible adult's account, including an account an eligible adult is a beneficiary of, by a broker-dealer or investment advisor.

Under the act, the petition to remove either of these holds must generally be filed in the probate district where the (1) eligible adult resides, is domiciled, or is located when the petition is filed or (2) financial institution has an office. However, if the eligible adult is under conservatorship, the petition must be filed in the probate court for the probate district in which the conservatorship is pending. The petition must include the following information:

1. the eligible adult's name, date of birth, and address;
2. the eligible adult's spouse's name and address, if any;
3. the eligible adult's conservator's name and address, if any;
4. the petitioner's name and address, if the petitioner is not the eligible adult;
5. the name and address of the financial institution, broker-dealer, or investment advisor imposing the hold;
6. whether DSS is known to be investigating the eligible adult's welfare;
7. whether a petition to appoint a conservator is pending in any probate court, and if so, a description of the probate court where the petition is pending;
8. a description of the transaction subject to the hold; and
9. a statement on why the transaction will not result in financial exploitation of the eligible adult.

The act requires the probate court to (1) set a time and place for a hearing on the petition that must be held within 10 days after the petition's filing date, unless continued by the court for cause, and (2) give notice of the hearing to the DSS commissioner and each eligible adult, spouse, conservator, petitioner, financial institution, broker-dealer, and investment advisor identified in the petition.

The probate court must order a hold released if it (1) determines 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 eligible adult or (2) finds that the eligible adult is not a Connecticut resident. If the probate court determines there is reasonable cause for the hold, it may order the hold to be modified or continued for up to 30 days from the order's date or until a conservator is appointed for the eligible adult, whichever occurs first.

The act establishes a $250 probate court fee when filing to release a hold. However, upon disposition of a hold petition, the court may order reimbursement of the 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 eligible adult'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 at a bank or credit union is evidence of intent by the person creating the account to have it vest, if he or she dies, to any other account holders. Prior law required 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 act replaces the clear and convincing evidentiary standard with preponderance of the evidence, which is a lower legal standard.

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.).

§ 6 — FINANCIAL INSTITUTIONS' PERIODIC STATEMENTS

The act requires financial institutions to comply with certain provisions in three federal and state laws about periodic statements to consumers. Under this provision of the act, "financial institutions" are (1) Connecticut-chartered or -organized bank and trust companies, savings banks, savings and loan associations, and credit unions and (2) federal national banking associations, savings banks, savings and loan associations, and credits unions that have their principal offices in Connecticut (CGS §§ 36a-2 & 36a-316).

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.