



2019 MAR -5 PM 2:32
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

MAR - 5 2019

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the "Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2019."

This legislation is designed to provide for mandatory reporting of suspected instances of financial exploitation of seniors and vulnerable adults applicable to banks, credit unions, and other depository and non-depository institutions; insurers and insurance producers; broker-dealers; and investment advisers. The Bill also provides for notification of potential financial exploitation to designated third parties with the advance consent of the senior citizen or vulnerable adult.

In addition, regulated entities are given the authority to temporarily delay disbursement of funds in cases of suspected financial exploitation, and are eligible for immunity from civil and administrative liability for reporting, disclosure, and disbursement delays. Finally, the Bill mandates records sharing related to financial exploitation of seniors and vulnerable adults with the Department of Insurance, Securities and Banking (DISB), Adult Protective Services (APS), and law enforcement.

The Bill is largely modeled on the North American Securities Administrators Association's (NASAA), "An Act to Protect Vulnerable Adults from Financial Exploitation," however the Bill has been modified to include all District financial sectors, including insurance, securities and banking. More than one quarter of the states have introduced or enacted similar consumer protection oriented legislation.


Accordingly, I urge the Council to act favorably on the proposed Bill.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee on _____.

To provide for a mandatory reporting requirement of suspected instances of financial exploitation of seniors and vulnerable adults applicable to qualified individuals of financial institutions, insurers, insurance producers, broker-dealers and investment advisers; to provide for notification to third parties of potential financial exploitation with advance consent of eligible adults; to provide authority to temporarily delay disbursement of funds in cases of suspected financial exploitation; to provide for immunity from civil and administrative liability for reporting, disclosure, and disbursement delays; and to provide for mandatory sharing of records related to financial exploitation of seniors and vulnerable adults with the Department of Insurance, Securities and Banking, Adult Protective Services, and law enforcement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2019.”

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Agent” shall have the same meaning as provided in section 101(3)(A) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(3)(A)).

(2) “Broker-dealer” shall have the same meaning as provided in section 101(4) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(4)).

38 (3) “Commissioner” means the Commissioner of the Department of Insurance,
39 Securities and Banking.

40 (4) “Department” means the Department of Insurance, Securities and Banking.

41 (5) “Director” means the Director of the District of Columbia Division of Adult
42 Protective Services.

43 (6) “Eligible adult” means:

44 (A) A person 65 years of age or older; or

45 (B) A person subject to the Adult Protective Services Act of 1984,
46 effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901 *et seq.*).

47 (7) “Financial exploitation” means:

48 (A) The wrongful or unauthorized taking, withholding, appropriation, or
49 use of money, assets or property of an eligible adult; or

50 (B) Any act or omission, including using a power of attorney,
51 guardianship, or conservatorship of an eligible adult, to:

52 (i) Obtain control, through deception, intimidation or undue
53 influence, over the eligible adult’s money, assets or property to deprive the eligible adult of the
54 ownership, use, benefit or possession of his or her money, assets or property; or

55 (ii) Convert money, assets or property of the eligible adult to
56 deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets
57 or property.

58 (8) “Financial institution” means any depository or non-depository institution
59 licensed and regulated under Title 26 of the D.C. Official Code, and any bank or credit union
60 located in the District of Columbia.

61 (9) “Insurance producer” means a person required to be licensed in the District to
62 sell, solicit, or negotiate insurance under the Producer Licensing Act of 2002 (D.C. Law 14-264;
63 D.C. Official Code § 31-1131.02).

64 (10) “Insurer” means any person, firm, association, or corporation duly licensed in
65 the District as an insurance company pursuant to section 5 of chapter II of the Life Insurance
66 Act, approved June 19, 1934 (48 Stat. 1131; D.C. Code § 31-4304), and section 2 of chapter II of
67 the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1066; D.C. Official Code § 31-
68 2502.02).

69 (11) “Investment adviser” shall have the same meaning as provided in section
70 101(17)(A) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C.
71 Official Code § 31-5601.01(17)(A)).

72 (12) “Investment adviser representative” has the meaning ascribed in section
73 101(18) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C.
74 Official Code § 31-5601.01(18)).

75 (13) “Regulated firm” means any broker-dealer or investment adviser licensed
76 under the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official
77 Code § 31-5601 *et seq.*), or any financial institution, insurance producer, or insurer.

78 (14) “Qualified individual” means:

79 (A) Any agent, investment adviser representative or person who serves in
80 a supervisory, compliance or legal capacity for a broker-dealer or investment adviser;

81 (B) Any person who serves in a supervisory, compliance or legal capacity
82 of a financial institution; or

83 (C) Any person who serves in a supervisory, compliance or legal capacity
84 of an insurer or a producer.

85 Sec. 3. Governmental disclosures.

86 (a) If a qualified individual reasonably believes that financial exploitation of an eligible
87 adult may have occurred, may have been attempted, or is being attempted, the qualified
88 individual shall promptly notify the Commissioner and the Director.

89 (b) Notification to the Department shall be made on a form and in a manner prescribed by
90 the Commissioner by rule.

91 Sec. 4. Immunity for governmental disclosures.

92 A qualified individual who, in good faith and exercising reasonable care, makes a
93 disclosure of information pursuant to section 3 shall be immune from administrative or civil
94 liability that may otherwise arise as a result of such disclosure.

95 Sec. 5. Third-party disclosures.

96 (a) Except as provided in subsection (b) of this section, if a qualified individual
97 reasonably believes that financial exploitation of an eligible adult may have occurred, may have
98 been attempted, or is being attempted, a qualified individual may notify any third party
99 previously designated by the eligible adult to receive financial information.

100 (b) Disclosure of financial exploitation of an eligible adult shall not be made to any
101 designated third party that is suspected of financial exploitation or other abuse of the eligible
102 adult.

103 Sec. 6. Immunity for third-party disclosures.

104 A qualified individual who, in good faith and exercising reasonable care, complies with
105 section 5 shall be immune from any administrative or civil liability that may otherwise arise as a
106 result of a disclosure and notification.

107 Sec. 7. Delay of disbursements by regulated firms.

108 (a) Upon meeting the requirements in subsection (b) of this section, a regulated firm may
109 delay a disbursement of funds that are contained in an account:

110 (1) Of an eligible adult or on which the eligible adult is a beneficiary, including a
111 trust or guardianship account; or

112 (2) Of a person suspected of perpetrating financial exploitation against an eligible
113 adult.

114 (b) To delay a disbursement from an account referenced in subsection (a) of this section,
115 the regulated firm must:

116 (1) Reasonably believe, after initiating an internal review of the requested
117 disbursement and all known facts related to the suspected financial exploitation, that the
118 requested disbursement is intended to or may result in financial exploitation of an eligible adult;

119 (2) Immediately, but in no event more than 2 business days after the disbursement
120 is requested, provide written notification of the delay and the reason for the delay to all parties
121 authorized to transact business on the account, except that the regulated firm shall not provide
122 notification to any party that is reasonably believed by the regulated firm to have attempted to
123 engage in financial exploitation of the eligible adult;

124 (3) Immediately, but in no event more than 2 business days after the disbursement
125 is requested, notify the Commissioner and the Director; and

126 (4) Diligently conduct its internal review of the suspected or attempted financial
127 exploitation of the eligible adult, as necessary, and report the results of the investigation to the
128 Commissioner and the Director within 7 business days after the disbursement is requested.

129 (c) Any disbursement that has been delayed pursuant to this section must be disbursed
130 upon the earlier of:

131 (1) A determination by the regulated firm that the disbursement will not result in
132 financial exploitation of the eligible adult; or

133 (2) 15 business days after the date on which the regulated firm first delayed
134 disbursement of the funds, unless either the Commissioner or the Director requests that the
135 regulated firm extend the delay, in which case the delay shall expire no more than 25 business
136 days after the date on which the regulated firm first delayed disbursement of the funds unless
137 sooner terminated by the Commissioner, the Director, or an order of a court of competent
138 jurisdiction.

139 (d) A court of competent jurisdiction may enter an order extending the delay of the
140 disbursement of funds or may order other protective relief based on the petition of the
141 Commissioner, the Director, the regulated firm that initiated the delay under this section, or
142 another interested party.

143 (e) Each regulated firm shall adopt internal policies, programs, plans, or procedures for
144 delaying disbursements under this section.

145 (f) A regulated firm may satisfy the requirement in subsection (e) of this section by
146 adopting any standard policies and procedures approved or established by the Commissioner by
147 rule.

148 Sec. 8. Immunity for delay of disbursements.

149 A regulated firm that, in good faith and exercising reasonable care, complies with section
150 7 shall be immune from any administrative or civil liability that may otherwise arise from a delay
151 in a disbursement.

152 Sec. 9. Records.

153 (a) A qualified individual shall provide access to or copies of records that are relevant to
154 the suspected or attempted financial exploitation of an eligible adult to the Commissioner, the
155 Director, and to law enforcement, either as part of a referral, or upon request of the
156 Commissioner, the Director, or law enforcement pursuant to an investigation. The records may
157 include historical records as well as records relating to the most recent transaction or transactions
158 that may comprise financial exploitation of an eligible adult. All records made available to
159 agencies under this section shall not be considered a public record as defined in section 2 of the
160 District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204;
161 D.C. Official Code § 2-502(18)).

162 (b) Nothing in this provision shall limit or otherwise impede the authority of the
163 Commissioner to access or examine the books and records of a regulated firm as otherwise
164 provided by law.

165 Sec. 10. Penalties.

166 A qualified individual who fails to provide notification as required under section 3 is
167 subject to a fine of up to \$10,000.

168 Sec. 11. Rulemaking.

169 The Commissioner may promulgate rules to implement the provisions of this act.

170 Sec. 12. Fiscal impact statement.

171 The Council adopts the fiscal impact statement in the committee report as the fiscal
172 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
173 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

174 Sec. 13. Effective date.

175 This act shall take effect following approval by the Mayor (or in the event of veto by the
176 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
177 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
178 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
179 Columbia Register.


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: January 10, 2019

SUBJECT: Fiscal Impact Statement – Protection of Seniors and Vulnerable Adults
from Financial Exploitation Act of 2019

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on January 4,
2019

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

The bill establishes protections for seniors¹ and other vulnerable adults² from financial exploitation. Financial exploitation includes any wrongful or unauthorized taking, withholding, or appropriation on the money, assets, or properties of an eligible adult, including the use of a power of attorney to undertake such actions.

The bill requires any qualified employee³ of a broker-dealer, insurer, investment advisor, or financial institution to report potential financial exploitation to the Commissioner of the Department of Insurance, Securities, and Banking (DISB) and the Director of the District of Columbia Division of Adult Protective Services (APS) in a manner prescribed by the DISB Commissioner by rule. Qualified individuals who fail to report as required could be subject to penalties of up to \$10,000. The bill allows qualified employees to notify a designated third party of

¹ Seniors are defined as persons over 65 years of age.

² Vulnerable adults are adults 18 years of age or older in need of protective services under the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901 et seq.).

³ Qualified employees are agents, investment advisors, supervisors, compliance personnel, or other legal personnel of firms in the identified industries.

The Honorable Phil Mendelson

FIS: "Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2019," Draft Bill as shared with the Office of Revenue Analysis on January 4, 2019

a senior or vulnerable adult in the event the employee suspects financial exploitation.⁴ The bill also allows a firm to delay disbursement of funds when it believes financial exploitation is taking place. The firm must conduct an internal investigation and, within two days of the disbursement request, provide notification to any parties authorized to transact business on the account, the Commissioner, and the Chief. The firm must disburse the funds on the earlier of a completed investigation where no wrongdoing was found or fifteen business days after the disbursement request, unless the Commissioner or a court order requests an extended timeline.

The bill provides all qualified employees and firms with immunity from administrative or civil liability for any disclosures, notifications, or delayed disbursements.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The budgets of DISB and APS can absorb any costs associated with receiving financial exploitation notifications or disclosures, as well as any required enforcement actions. Although the bill provides for the imposition of fines for violations of the notification requirement, the bill's reporting requirements are new, and therefore data is insufficient to project any fine revenues.

The bill imposes notification, investigation, and reporting requirements upon employees and firms in the broker-dealer, insurance, investment advisory, and financial institution industries, but any related costs will be borne by the private sector.

⁴ Unless such designated individual is suspected of the exploitation

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: January 8, 2019

SUBJECT: Legal Sufficiency Review of Draft Bill Entitled the "Protection of Seniors and Vulnerable Adults from Financial Exploitation Act of 2019"
(AE-17-514-C)

This is to Certify that this Office has reviewed the above-referenced Draft Bill and found it to be legally unobjectionable. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins