

Hall of the House of Representatives

93rd General Assembly - Regular Session, 2021

Amendment Form

Subtitle of House Bill No. 1391

TO AMEND THE LAW CONCERNING CONSUMER PROTECTION OF SENIORS FROM PREDATORY PRACTICES.

Amendment No. 1 to House Bill 1391

Amend House Bill No. 1391 as originally introduced:

Add Representatives Gazaway, Lundstrum, McClure, McGrew, Milligan, Richardson, Rye as cosponsors of the bill

AND

Add Senators J. Dismang, J. English, K. Hammer as cosponsors of the bill

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Protecting older adults and vulnerable adults is a priority for our state;

(2) The number of cases involving scams or exploitation of older adults or vulnerable adults has quadrupled in the last three (3) years, yet older adults or vulnerable adults are the least likely of any age or socioeconomic group to report losing money to fraud;

(3) Older adults are using wire transfers and other types of electronic payment methods to send money to fraudulent people who are perpetuating romance scams, government imposter scams, and sweepstakes scams; and

(4) The economic effects of romance scams, government imposter scams, and sweepstakes scams is devastating to older adults or vulnerable adults.

(b) It is the intent of the General Assembly:

(1) To protect consumers from deceptive acts or practices in commerce;

(2) To arm the financial institutions in this state, as well as the Attorney General and other law enforcement agencies, with the tools



needed to recognize, report, delay, and combat financial exploitation; and
(3) To commit to protecting older adults and vulnerable adults
through innovative and aggressive tactics.

SECTION 2. Arkansas Code § 4-88-107(a), concerning deceptive and unconscionable trade practices, is amended to add an additional subdivision to read as follows:

(12) Knowingly facilitating, assisting, intermediating, or in any way aiding the operation or continuance of an act or practice that is in violation of this chapter.

SECTION 3. Arkansas Code § 4-88-113(d)(1), concerning civil remedies used in actions involving deceptive trade practices, is amended to read as follows:

(d)(1) Every person, or every partner, officer, or director of another person who directly or indirectly controls another person or who is in violation of or liable under this chapter and every partner, officer, or director of another person who is in violation of or liable under this chapter, or every person who directly or indirectly facilitates, assists, acts as intermediary for, or in any way aids another person who is in violation of or liable under this chapter in the operation or continuance of the act or practice for which the violations or liability exists shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of the provisions of this chapter, provided that if the persons to be held jointly and severally liable knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists.

SECTION 4. Arkansas Code § 4-88-201 is amended to read as follows:
4-88-201. Definitions.

As used in this subchapter:

(1) "Account" means funds or assets held by a financial services provider, including without limitation:

(A) A deposit account;

(B) A checking account;

(C) A money market account;

(D) A savings account;

(E) A share account;

(F) A certificate of deposit;

(G) A trust account;

(H) An individual retirement account or other type of retirement account;

(I) A guardianship or conservatorship account;

(J) An investment or securities account;

(K) A loan;

(L) A credit card; or

(M) Any extension of credit, including a home equity line of credit;

~~(a)~~(2) "Elder person" means a person who is sixty (60) years of age or older;

(3) "Exploitation" means the act of forcing, compelling, or exerting undue influence over a person causing the person to act in a way that is inconsistent with the person's relevant past behavior or causing the person to perform services or purchase goods and services for the benefit of another person;

(4) "Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an elder person or person with a disability, including incurring debt in the name of an elder person or person with a disability for the benefit of a third party; or

(B) Any act or omission taken by an individual, including through the use of a power of attorney, guardianship, or conservatorship of an elder person or person with a disability, to either:

(i) Obtain control through deception, intimidation, or undue influence over the elder person's or person with a disability's money, assets, or property to deprive the elder person or person with a disability of the ownership, use, benefit, or possession of his or her money, assets, or property; or

(ii) Convert money, assets, or property of the elder person or person with a disability to deprive the elder person or person with a disability of the ownership, use, benefit, or possession of his or her money, assets, or property;

(5) "Financial services provider" means an entity, including the entity's employees and officers, regulated by the State Bank Department or a similar federal regulatory agency, engaged in or transacting business in this state, including without limitation:

(A) A state or national bank or trust company;

(B) A state or federal savings and loan association;

(C) A state or federal credit union;

(D) A building and loan association;

(E) A mortgage banker, mortgage broker, loan officer, or mortgage servicer under the Fair Mortgage Lending Act, § 23-39-501 et seq.; or

(F) A pawnbroker;

(6) "Financial transaction" means:

(A) A transfer or request to transfer or disburse funds or assets in an account;

(B) A request to initiate a wire transfer, initiate an automated clearing house transfer, or issue a money order, cashier's check, or official check;

(C) A request to negotiate a check or other negotiable instrument;

(D) A request to change the ownership of an account;

(E) A request for a loan, extension of credit, or draw on a line of credit;

(F) A request to transfer the title to any real property or the title of any motor vehicle or mobile home, or to encumber the real property, motor vehicle, or mobile home;

(G) Expanding access to an account through an online or telephone banking system or adding an additional person as an authorized

signer or person otherwise authorized to initiate transactions in the account; or

(H) Opening or establishing a new account;

(7) "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

~~(b)~~(8) "Person with a disability" means a person who has a physical or mental impairment which substantially limits one (1) or more of such person's major life activities.

~~(1)~~(A) As used in this subsection, "physical or mental impairment" means any of the following:

~~(A)~~(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one (1) or more of the following body systems:

~~(a) neurological~~ Neurological;

~~(b) musculoskeletal~~ Musculoskeletal;

~~(c) special~~ Special sense organs;

~~(d) respiratory~~ Respiratory, including speech organs;

~~(e) cardiovascular~~ Cardiovascular;

~~(f) reproductive~~ Reproductive;

~~(g) digestive~~ Digestive;

~~(h) genitourinary~~ Genitourinary;

~~(i) hemie~~ Hemic and lymphatic;

~~(j) skin~~ Skin; or

~~(k) endocrine~~ Endocrine; or

~~(B)~~(ii) Any mental or psychological disorder, including intellectual and developmental disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

~~(2)~~(B) The term "physical or mental impairment" includes, ~~but is not limited to, such~~ without limitation diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, spina bifida, Down syndrome, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual and developmental disabilities, and emotional illness; ~~and~~

~~(e)~~(9) "Substantially limits" means substantially interferes with or affects over an extended period of time. Minor temporary ailments or injuries shall not be considered physical or mental impairments that substantially limit a person's major life activities. Examples of minor temporary ailments are colds, influenza, sprains, or minor injuries.

~~(d)~~ "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

SECTION 5. Arkansas Code § 4-88-206 is amended to read as follows:

4-88-206. Referrals for ~~abuse, neglect, and exploitation~~ and deceptive and unconscionable trade practices.

(a) The Attorney General shall establish and maintain referral procedures with the ~~Division of Aging, Adult, and Behavioral Health Services~~ Arkansas Adult Protective Services Unit of the Department of Human Services in order to provide any necessary intervention and assistance to an elder

person or person with a disability who may have been victimized by violations of this chapter.

(b) In order to provide any necessary intervention and assistance to an elder person or a person with a disability, as defined in this chapter, who may have been victimized by a person who is in violation of this chapter, the Arkansas Adult Protective Services Unit of the Department of Human Services shall refer to the Consumer Protection Division within the Office of the Attorney General any cases involving suspected exploitation and financial exploitation, as defined in § 4-88-201 to the Attorney General within forty-eight (48) hours of receipt, or at the close of business on the next business day if there is an intervening weekend or state holiday.

SECTION 6. Arkansas Code Title 4, Chapter 88, Subchapter 2, is amended to add additional sections to read as follows:

4-88-208. Financial services provider – Refusal or delay of financial transactions – Temporary hold on financial transactions.

(a)(1) If a financial services provider has reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted, the financial services provider may refuse or delay the execution of a financial transaction of an elder person or a person with a disability, on an account:

(A) That the elder person or person with a disability is a beneficiary, including a trust, guardianship, or conservatorship account; or

(B) Of a person suspected of perpetrating the financial exploitation.

(2) A financial services provider may also refuse or delay the execution of a financial transaction under this section if the Attorney General, a state agency, or a law enforcement agency provides information to the financial services provider demonstrating that it is reasonable to believe that financial exploitation may have occurred, may have been attempted, or is being attempted.

(b) Except as ordered by a court, a financial services provider is not required to refuse or delay the execution of a financial transaction under this section and may use its discretion to determine whether to refuse or delay the execution of a financial transaction based on the information available to the financial services provider.

(c) A financial services provider that refuses to execute a financial transaction or places a hold on a financial transaction based on reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted may:

(1) Except with regard to an account administered by a bank or trust company in a fiduciary capacity, make a reasonable effort to notify one (1) or more parties authorized to transact business on the account orally or in writing; and

(2) If the incident involves financial exploitation, report the incident to the Department of Human Services under § 4-88-206(b).

(d) Notwithstanding subsection (c) of this section, notice to any party authorized to conduct business on the account is not required if the party is the suspected perpetrator of financial exploitation.

(e) A refusal by a financial services provider to execute a financial transaction or place a hold on a financial transaction as authorized by this section, based on the financial services provider's reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted, expires when the financial services provider reasonably believes that the financial transaction will not result in financial exploitation unless terminated earlier by an order of a court of competent jurisdiction.

(f) A financial services provider or an officer, director, employee, agent, or other representative of a financial services provider, acting in a reasonable manner, is immune from all criminal, civil, and administrative liability for the following:

(1) Refusing or not refusing to execute a financial transaction or holding or not holding a financial transaction under this section; and

(2) An action taken in furtherance of the determination made under subdivision (f)(1) of this section if the determination was based upon a reasonable belief.

4-88-209. Protection of consumers from financial exploitation.

(a) If necessary to provide intervention and assistance to consumers, including elder persons or persons with a disability, the Attorney General may petition a court of competent jurisdiction requesting an order delaying or extending a delay of disbursement of funds.

(b) The delay shall expire:

(1) As directed by an order of the court;

(2) When the Attorney General reasonably determines that the financial transaction will not result in financial exploitation; or

(3) No more than ten (10) business days after the date on which the petition was filed with the court.

(c)(1) A financial services provider shall, upon request by the Attorney General, provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation to the Attorney General.

(2) The records should include historical records as well as records relating to the most recent transactions or transactions that may compromise financial exploitation.

(d) The records, materials, data, and information made available by a financial services provider are confidential and shall not be disclosed to any person other than those persons specifically authorized by the Attorney General to receive the information.

(e) A financial services provider is immune from any civil or criminal liability that might otherwise result from complying with this section.

4-88-210. Report by financial services provider to local and state law enforcement of suspicious activity.

(a) A financial services provider that voluntarily or mandatorily reports via a suspicious activity report, pursuant to 31 U.S.C. § 5318(g), as it existed on January 1, 2021, any violation of law or rule constituting a violation of this chapter, may also report the information contained in the suspicious activity report to local or state law enforcement agencies, including the Attorney General.

(b) A financial services provider is immune from any civil or criminal liability that might otherwise result from complying with this section."

The Amendment was read _____

By: Representative Wing

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Chief Clerk