WEST VIRGINIA CODE CHAPTER 31A ARTICLE 2C

WV Legislature

§31A-2C-1. Short title.

This article may be cited as Banking and Financial Services Provider Protections for Eligible Adults from Financial Exploitation.

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§31A-2C-2. Legislative findings, purpose, and intent.

(a) The Legislature recognizes that depository institutions have duties imposed by law and by contract to conduct customer-directed transactions in a timely manner, and in accordance with their customers' instructions.

(b) The Legislature recognizes that customers are increasingly being induced to authorize transactions that are not in their interest.

(c) It is the intent of the Legislature to:

(1) Ensure that eligible adults have ready access to their funds;

(2) Provide depository institutions with the tools and protections to intervene in customer-directed transactions when, in their discretion, the transaction presents a potential significant risk of harm to the customer; and

(3) Provide designated state agencies with the tools and information to investigate potential financial exploitation.

(d) The Legislature does not intend to create a duty for depository institutions to contravene the valid instructions of their customers, and nothing in this article creates such a duty.

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§31A-2C-3. Definitions.

The terms and phrases used in this article have the following meanings:

"Account" means a contract deposit of funds between the depositor and a depository institution that is one of the following:

(A) A consumer account owned by an eligible adult, whether individually or with one or more other persons;

(B) A conservatorship or guardianship account of which the eligible adult is a beneficiary; or

(C) A line of credit owned by an eligible adult, whether individually or with one or more other persons.

"Associated third-party" means an individual that:

(A) An eligible adult has previously designated as an emergency contact for the depository institution to contact in writing, or who is the parent, spouse, adult child, sibling, or other close family member of the eligible adult;

(B) Is a co-owner, additional authorized signatory, or beneficiary on an eligible adult's account or an agent under a power of attorney; or

(C) Is an attorney, trustee, conservator, guardian, or other fiduciary whom a court or a government agency selects to manage some or all of the financial affairs of the eligible adult.

"Depository institution" has the same meaning as defined in §31-17A-2 of this code.

"Designated state agency" means the entity responsible for receiving reports of alleged or suspected maltreatment or financial exploitation of an eligible adult, including the West Virginia Department of Human Services Bureau for Social Services and the West Virginia Attorney General.

"Eligible adult" means:

(A) A person 65 years of age or older or a person subject to §9-6-1 *et seq*. of this code; or

(B) A person 18 years or older who:

(i) Has a substantial mental or functional impairment that significantly interferes with his or her ability to make financial decisions, or for whom a guardian has been appointed under state law; and

(ii) The depository institution has actual knowledge that the person has a substantial mental or functional impairment or that a guardian has been appointed under state law.

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"Financial exploitation" means:

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

(B) An act or omission taken by a person, including through the use of a power of attorney, guardianship, trustee, or conservatorship of an eligible adult, to:

(i) 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

(ii) 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.

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§31A-2C-4. Government disclosures.

Any depository institution or its employees, or both, who believe that financial exploitation of an eligible adult has occurred, may have been attempted, or is being attempted, shall promptly notify a designated state agency.

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§31A-2C-5. Authority to delay, refuse, or prevent certain activities.

(a) When, based on personal observation or information received from a governmental agency or law-enforcement agency, a depository institution or its employees believe that financial exploitation of an eligible adult may have occurred, has been attempted, is occurring, or is being attempted, the depository institution or its employees may, but are not required to:

(1) Delay or refuse one or more transactions with or involving the eligible adult;

(2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the eligible adult's account;

(3) Prevent a change in ownership of the eligible adult's account;

(4) Prevent a transfer of funds from the eligible adult's account to an account owned wholly or partially by another person;

(5) Refuse to comply with instructions given to the depository institution by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the eligible adult; or

(6) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an eligible adult at death.

(b) A depository institution or its employees are not required to act under subsection (a) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use their sole discretion to determine whether or not to act under subsection (a) of this section based on the information available to them at the time.

(c) The authority to delay and/or refuse a transaction set forth in subsection (a) of this section expires upon the sooner of:

(1) Fifteen business days after the date on which the depository institution first acted under subsection (a) of this section, unless the designated state agency is conducting an investigation and requests an extension, in which case it may be extended for an additional 30 days;

(2) When the depository institution is satisfied in its sole discretion that the transaction or act will not likely result in financial exploitation of the eligible adult; or

(3) Upon an order of a court of competent jurisdiction directing the release of funds.

(d) Notwithstanding any other law to the contrary, the refusal to engage in a transaction as authorized under subsection (a) of this section may not constitute the wrongful dishonor of

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an item under §46-4-1 *et seq*. of this code.

(e) A reasonable belief that payment of a check will facilitate the financial exploitation of an eligible adult constitutes reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. § 5001 *et seq*., the federal Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq*., and 12 C.F.R. part 229. Nothing herein, however, requires depository institutions or their employees to review the checks of eligible adults.

(f) A delay or refusal to complete a funds transfer request as authorized under subsection (a) of this section does not violate §46-4A-101 *et seq*. of this code: *Provided*, That if a transaction is delayed under subsection (a) of this section, the payment order is not considered as received until the hold is removed and the depository institution submits the payment order for processing. Funds transfer and payment order have the same meanings as defined in §46-4A-101 *et seq*. of this code.

(g) The depository institution shall maintain internal records of any delay and/or refusal of a transaction as set forth in subsection (a) of this section.

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§31A-2C-6. Third-party notifications.

(a) A depository institution or its employees may notify an associated third party, if any, if the depository institution or its employees believe that the financial exploitation of the eligible adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(b) A depository institution or its employees may choose not to notify an associated third party as described in subsection (a) of this section if the depository institution or its employees believe that the third party is, may be, or may have been engaged in the financial exploitation of the eligible adult.

(c) When providing information under subsection (a) of this section, a depository institution or its employees may limit the information provided to disclose their suspicion that the eligible adult may be a victim or target of financial exploitation.

(d) Any disclosure under subsection (a) of this section is exempt from coverage by state privacy laws and requirements.

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§31A-2C-7 Immunities.

If the determinations and actions of a depository institution or an employee of a depository institution are made in good faith and in accordance with the provisions of this article, then the depository institution or employee shall be immune from criminal, civil, or administrative liability for the following:

(1) A depository institution or its employees who makes, or chooses not to make a disclosure pursuant to §31A-2C-4 of this code, notify an associated third-party pursuant to §31A-2C-6 of this code, or participate in a judicial proceeding, administrative proceeding, or investigation arising from a notification or report;

(2) A depository institution or its employees that delays, refuses, or prevents a transaction pursuant to §31A-2C-5 of this code, or decides not to delay, refuse, or prevent a transaction pursuant to §31A-2C-5 of this code; or

(3) A depository institution or its employees who accept from the eligible adult the designation of an associated third-party the information provided by the eligible adult regarding the associated third-party.

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