

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 953

Introduced by Kolterman, 24.

Read first time January 13, 2016

Committee:

- 1 A BILL FOR AN ACT relating to financial institutions; to provide for the
- 2 protection of qualified adults as prescribed.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. The purpose of sections 1 to 9 of this act is to protect
2 senior citizens from financial exploitation. Sections 1 to 9 of this act
3 establishes a process whereby a financial advisor who suspects that
4 attempted financial exploitation of a senior client may be occurring may
5 notify his or her firm of the suspected financial exploitation. The firm,
6 upon suspecting financial exploitation of a senior client, may
7 temporarily refuse to execute the client's requested financial
8 transaction and notify the appropriate agencies.

9 Sec. 2. For purposes of sections 1 to 9 of this act:

10 (1) Agencies means the Department of Insurance and the Department of
11 Banking and Finance.

12 (2) Financial exploitation means the wrongful, unauthorized, or
13 deceitful taking or attempted taking, withholding, appropriation, or use
14 of money, assets, real property, or personal property of a qualified
15 adult.

16 (3) Financial advisor means a person required to be licensed under
17 the laws of this state to sell, solicit, or negotiate insurance; an
18 individual who represents a broker-dealer in effecting or attempting to
19 effect purchases or sales of securities; or an individual who is a
20 representative of a state or federal-registered investment advisor.

21 (4) Firm means an insurance company, broker-dealer, or investment
22 advisor, licensed to do business in this state.

23 (5) Immediate family member means a spouse, child, parent, or
24 sibling, of a qualified adult.

25 (6) Qualified adult means a person sixty years of age or older.

26 (7) Qualified individual means a person associated with a firm who
27 serves in a supervisory capacity for the financial advisor as part of his
28 or her position with the firm.

29 Sec. 3. (1) If a financial advisor who has direct contact with a
30 qualified adult reasonably believes that financial exploitation of a
31 client who is a qualified adult has occurred, has been attempted, or is

1 being attempted, the financial advisor may notify a qualified individual.

2 (2) A qualified individual, either (a) upon receiving a notice of
3 potential, attempted, or ongoing financial exploitation of a client who
4 is a qualified adult or (b) in his or her own discretion based upon
5 information available to the qualified individual, may notify the
6 appropriate agencies of such possible exploitation. Subsequent to the
7 qualified individual notifying the agencies of such suspected
8 exploitation, the qualified individual may notify an immediate family
9 member, legal guardian, conservator, co-trustee, successor trustee, or
10 agent under power of attorney of the qualified adult of the suspected
11 financial exploitation of the qualified adult.

12 Sec. 4. (1) A qualified individual, or a firm upon written request
13 of a qualified individual, may temporarily refuse a request to execute a
14 financial transaction or disburse transaction proceeds involving an
15 account or other asset of a client who is a qualified adult for up to
16 fifteen business days after the date on which the qualified individual or
17 firm first delayed the execution of the transaction or disbursement of
18 the funds if the qualified individual or firm has a reasonable basis to
19 believe that the execution of the transaction or disbursement of proceeds
20 will result in the financial exploitation of the client. Upon taking this
21 action, the qualified individual or firm will:

22 (a) Notify the appropriate agencies within three business days of
23 the temporary refusal to execute the transaction or disburse the
24 transaction proceeds; and

25 (b) Make a reasonable effort to notify the client within three
26 business days of the temporary refusal to execute the financial
27 transaction or disburse the proceeds from a transaction.

28 (2) The appropriate agency, upon receiving a notice from a qualified
29 individual or firm that the qualified individual or firm is delaying the
30 execution of or disbursement of funds from a financial transaction due to
31 suspected financial exploitation, shall investigate the reported

1 transaction and determine if the qualified individual or firm should
2 proceed with or continue to postpone the execution of or disbursement of
3 funds from the transaction. The agency shall deliver its determination in
4 writing to the qualified individual or firm within the fifteen business-
5 day time period specified in section 4 of this act.

6 (3) The qualified individual's or firm's authority to refuse to
7 execute the transaction or disburse the proceeds from a transaction shall
8 expire upon the sooner of:

9 (a) The time when the qualified individual or firm reasonably
10 believes that the execution of the transaction or disbursement of
11 proceeds will not result in the financial exploitation of the qualified
12 adult; or

13 (b) Unless extended in accordance with section 4 of this act,
14 fifteen business days after the initial refusal to execute the
15 transaction or disburse the proceeds from a transaction; or

16 (c) Receiving a determination from the appropriate agency that the
17 qualified individual or firm should proceed with the execution of or
18 disbursement of funds from the transaction.

19 (4) The temporary delay of the execution of a transaction or
20 disbursement of proceeds authorized by this section may be extended if
21 the appropriate agency enters an order or obtains an order from a court
22 of competent jurisdiction extending the temporary delay, or any other
23 protective relief.

24 (5) If the appropriate agency has not delivered the written
25 determination required under section 4 of this act within the time period
26 specified in that section, or as extended in accordance with such
27 section, the qualified individual or firm shall proceed with the
28 execution of or disbursement of funds from the transaction.

29 Sec. 5. A qualified individual or firm may provide access to or
30 copies of records that are relevant to the suspected financial
31 exploitation of a client who is a qualified adult to the agencies. The

1 records may include historical records or records relating to the most
2 recent transactions relating to the suspected financial exploitation of
3 the qualified adult. All records made available to the agencies under
4 this section shall not be considered public record.

5 Sec. 6. Notwithstanding any other provision of law to the contrary,
6 a financial advisor, qualified individual, or firm who, in good faith and
7 exercising reasonable care, complies with the provisions of this law and
8 takes action in accordance with any provision of this act shall be immune
9 from civil, criminal, administrative, or other liability for such
10 actions.

11 Sec. 7. (1) The agencies may develop training resources to assist
12 financial advisors, qualified individuals, and firms in the prevention
13 and detection of financial exploitation of a qualified adult. Such
14 resources may include indicators of financial exploitation of qualified
15 adults and potential steps financial advisors, qualified individuals, and
16 firms may take to prevent suspected financial exploitation of qualified
17 adults as authorized by sections 1 to 9 of this act.

18 (2) The use of such resources by any financial advisor, qualified
19 individual, or firm shall be voluntary in nature and firms are permitted,
20 but shall not be required to, develop and implement proprietary training
21 resources and programs for use by their employees and representatives.

22 (3) The use of any such training resources, whether developed by the
23 agencies or by private enterprise shall not create an assumption or
24 implication that financial advisors, qualified individuals, or firms are
25 qualified to, have the ability to, or are responsible for making a
26 determination about any individual's cognitive condition or possible
27 cognitive impairment.

28 Sec. 8. Any notice, notification, or determination required under
29 sections 1 to 9 of this act shall be provided in writing or
30 electronically by email.

31 Sec. 9. The agencies may, in accordance with the Administrative

1 Procedure Act, adopt and promulgate reasonable rules and regulations
2 necessary or proper to carry out the purposes of sections 1 to 9 of this
3 act.