

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 297

FINAL READING

Introduced by Lindstrom, 18.

Read first time January 12, 2021

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to banking and finance; to adopt the Nebraska
- 2 Protection of Vulnerable Adults from Financial Exploitation Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Nebraska Protection of Vulnerable Adults from Financial
3 Exploitation Act.

4 Sec. 2. For purposes of the Nebraska Protection of Vulnerable
5 Adults from Financial Exploitation Act, unless the context otherwise
6 requires:

7 (1) Agencies means:

8 (a) The Adult Protective Services Division of the Department of
9 Health and Human Services; and

10 (b) The Department of Banking and Finance;

11 (2) Agent has the same meaning as in section 8-1101;

12 (3) Broker-dealer has the same meaning as in section 8-1101;

13 (4) Eligible adult means:

14 (a) A senior adult as defined in section 28-366.01; or

15 (b) A vulnerable adult as defined in section 28-371;

16 (5) Financial exploitation means:

17 (a) The wrongful or unauthorized taking, withholding, appropriation,
18 or use of money, assets, or other property of an eligible adult; or

19 (b) Any act or omission taken by a person, including through the use
20 of a power of attorney, guardianship, or conservatorship of an eligible
21 adult, to:

22 (i) Obtain control, through deception, intimidation, or undue
23 influence, over the eligible adult's money, assets, or other property to
24 deprive the eligible adult of the ownership, use, benefit, or possession
25 of his or her money, assets, or other property; or

26 (ii) Convert money, assets, or other property of the eligible adult
27 to deprive such eligible adult of the ownership, use, benefit, or
28 possession of his or her money, assets, or other property;

29 (6) Investment adviser has the same meaning as in section 8-1101;

30 (7) Investment adviser representative has the same meaning as in
31 section 8-1101; and

1 (8) Qualified person means any broker-dealer, investment adviser,
2 agent, investment adviser representative, or person who serves in a
3 supervisory, compliance, or legal capacity for a broker-dealer or
4 investment adviser.

5 Sec. 3. If a qualified person reasonably believes that financial
6 exploitation of an eligible adult may have occurred, may have been
7 attempted, or is occurring or being attempted, the qualified person may
8 notify the agencies.

9 Sec. 4. (1) If a qualified person reasonably believes that
10 financial exploitation of an eligible adult may have occurred, may have
11 been attempted, or is occurring or being attempted, a qualified person
12 may notify any third party previously designated by the eligible adult or
13 any person allowed to receive notification under applicable law or any
14 customer agreement. Notification may not be made to any designated third
15 party that is suspected of financial exploitation or other abuse of the
16 eligible adult.

17 (2) Any qualified person that in good faith and exercising
18 reasonable care makes a notification pursuant to subsection (1) of this
19 section shall be immune from administrative or civil liability that might
20 otherwise arise from such notification or for any failure to notify the
21 eligible adult of the disclosure.

22 Sec. 5. (1) A broker-dealer or investment adviser may delay a
23 transaction or disbursement from an account of an eligible adult or an
24 account on which an eligible adult is a beneficiary if:

25 (a) The broker-dealer or investment adviser reasonably believes,
26 after initiating an internal review of the requested transaction or
27 disbursement, that the requested transaction or disbursement may result
28 in financial exploitation of an eligible adult; and

29 (b) The broker-dealer or investment adviser:

30 (i) Immediately, but in no event more than two business days after
31 the requested transaction or disbursement, provides written notification

1 of the delay and the reason for the delay to all parties authorized to
2 transact business on the account unless any such party is reasonably
3 believed to have engaged in suspected or attempted financial exploitation
4 of the eligible adult;

5 (ii) Immediately, but in no event more than two business days after
6 the requested transaction or disbursement, notifies the agencies; and

7 (iii) Continues its internal review of the suspected or attempted
8 financial exploitation of the eligible adult, as necessary, and reports
9 the internal review's results to the agencies upon request.

10 (2) Any delay of a transaction or disbursement as authorized by this
11 section will expire upon the sooner of:

12 (a) A determination by the broker-dealer or investment adviser that
13 the transaction or disbursement will not result in financial exploitation
14 of the eligible adult; or

15 (b) Fifteen business days after the date on which the broker-dealer
16 or investment adviser first delayed the transaction or disbursement of
17 the funds, unless either of the agencies requests that the broker-dealer
18 or investment adviser extend the delay, in which case the delay shall
19 expire no more than thirty business days after the date on which the
20 broker-dealer or investment adviser first delayed the transaction or
21 disbursement of the funds unless sooner terminated by either of the
22 agencies or by an order of a court of competent jurisdiction.

23 (3) A court of competent jurisdiction may enter an order extending
24 the delay of the transaction or disbursement of the funds or may order
25 other protective relief based on the petition of (a) either or both of
26 the agencies, (b) the broker-dealer or investment adviser that initiated
27 the delay under this section, or (c) any other interested party.

28 (4) Any qualified person that, in good faith and exercising
29 reasonable care, complies with this section shall be immune from any
30 administrative or civil liability that might otherwise arise from such
31 delay or notification.

1 Sec. 6. (1) A broker-dealer or investment adviser shall provide
2 access to or copies of records that are relevant to any suspected or
3 attempted financial exploitation of an eligible adult to (a) the Adult
4 Protective Services Division of the Department of Health and Human
5 Services, (b) other agencies charged with administering state adult
6 protective services laws, and (c) law enforcement, either as part of a
7 referral to the agencies or to law enforcement, or upon request of the
8 agencies or law enforcement pursuant to an investigation. The records may
9 include historical records as well as records relating to the most recent
10 transaction or disbursement or transactions or disbursements that may
11 comprise financial exploitation of an eligible adult.

12 (2) Any qualified person that, in good faith and exercising
13 reasonable care, complies with subsection (1) of this section shall be
14 immune from any administrative or civil liability that might otherwise
15 arise from providing such access to records.

16 (3) Any records made available to agencies and law enforcement under
17 this section shall not be considered public records subject to disclosure
18 pursuant to sections 84-712 to 84-712.09.

19 (4) Nothing in this section shall limit or otherwise impede the
20 authority of the Department of Banking and Finance to access or examine
21 the books and records of broker-dealers and investment advisers as
22 otherwise provided by law.