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4

As Engrossed: H3/31/21

A Bill

HOUSE BILL 1391

5 By: Representatives Wing, Gazaway, Lundstrum, McClure, McGrew, Milligan, Richardson, Rye
6 By: Senators J. Dismang, J. English, K. Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING CONSUMER
10 PROTECTION OF SENIORS FROM PREDATORY PRACTICES; AND
11 FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE LAW CONCERNING CONSUMER
16 PROTECTION OF SENIORS FROM PREDATORY
17 PRACTICES.
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 *SECTION 1. DO NOT CODIFY. Legislative findings and intent.*

23 *(a) The General Assembly finds that:*

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

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

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

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



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

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

4 (2) To arm the financial institutions in this state, as well as
5 the Attorney General and other law enforcement agencies, with the tools
6 needed to recognize, report, delay, and combat financial exploitation; and

7 (3) To commit to protecting older adults and vulnerable adults
8 through innovative and aggressive tactics.

9
10 SECTION 2. Arkansas Code § 4-88-107(a), concerning deceptive and
11 unconscionable trade practices, is amended to add an additional subdivision
12 to read as follows:

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

16
17 SECTION 3. Arkansas Code § 4-88-113(d)(1), concerning civil remedies
18 used in actions involving deceptive trade practices, is amended to read as
19 follows:

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

33
34 SECTION 4. Arkansas Code § 4-88-201 is amended to read as follows:

35 4-88-201. Definitions.

36 As used in this subchapter:

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

3 (A) A deposit account;

4 (B) A checking account;

5 (C) A money market account;

6 (D) A savings account;

7 (E) A share account;

8 (F) A certificate of deposit;

9 (G) A trust account;

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

12 (I) A guardianship or conservatorship account;

13 (J) An investment or securities account;

14 (K) A loan;

15 (L) A credit card; or

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

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

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

25 (4) "Financial exploitation" means:

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

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

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

1 assets, or property; or

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

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

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

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

12 (C) A state or federal credit union;

13 (D) A building and loan association;

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

17 (F) A pawnbroker;

18 (6) "Financial transaction" means:

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

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

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

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

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

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

32 (G) Expanding access to an account through an online or
33 telephone banking system or adding an additional person as an authorized
34 signer or person otherwise authorized to initiate transactions in the
35 account; or

36 (H) Opening or establishing a new account;

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

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

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

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

12 ~~(a) neurological~~ Neurological;

13 ~~(b) musculoskeletal~~ Musculoskeletal;

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

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

17 ~~(e) cardiovascular~~ Cardiovascular;

18 ~~(f) reproductive~~ Reproductive;

19 ~~(g) digestive~~ Digestive;

20 ~~(h) genitourinary~~ Genitourinary;

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

22 ~~(j) skin~~ Skin; or

23 ~~(k) endocrine~~ Endocrine; or

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

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

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

1 temporary ailments are colds, influenza, sprains, or minor injuries.

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

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

7 4-88-206. Referrals for ~~abuse, neglect, and exploitation~~ and deceptive
8 and unconscionable trade practices.

9 (a) The Attorney General shall establish and maintain referral
10 procedures with the Division of Aging, Adult, and Behavioral Health Services
11 Arkansas Adult Protective Services Unit of the Department of Human Services
12 in order to provide any necessary intervention and assistance to an elder
13 person or person with a disability who may have been victimized by violations
14 of this chapter.

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

24
25 SECTION 6. Arkansas Code Title 4, Chapter 88, Subchapter 2, is amended
26 to add additional sections to read as follows:

27 4-88-208. Financial services provider – Refusal or delay of financial
28 transactions – Temporary hold on financial transactions.

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

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

36 (B) Of a person suspected of perpetrating the financial

1 exploitation.

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

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

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

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

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

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

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

34 (f) A financial services provider or an officer, director, employee,
35 agent, or other representative of a financial services provider, acting in a
36 reasonable manner, is immune from all criminal, civil, and administrative

1 liability for the following:

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

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

7
8 4-88-209. Protection of consumers from financial exploitation.

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

13 (b) The delay shall expire:

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

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

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

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

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

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

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

32
33 4-88-210. Report by financial services provider to local and state law
34 enforcement of suspicious activity.

35 (a) A financial services provider that voluntarily or mandatorily
36 reports via a suspicious activity report, pursuant to 31 U.S.C. § 5318(g), as

1 it existed on January 1, 2021, any violation of law or rule constituting a
2 violation of this chapter, may also report the information contained in the
3 suspicious activity report to local or state law enforcement agencies,
4 including the Attorney General.

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

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