

Memorandum in Support

February 8, 2024

Effective Date: 180th Day

BUDGET BILL: S.8308/A.8808, Part II

LAW AND SECTIONS REFERRED TO: General Business Law, Banking Law, Social Services Law

INTRODUCTION

The New York State Bar Association’s Elder Law & Special Needs Section (“ELSN”) supports S.8308/A.8808, Part II, which amends sections of the Banking, General Business, and Social Services Laws to protect eligible adults from financial exploitation. ELSN commends the Governor for including this issue as part of the Executive budget and is strongly supportive of the Executive’s proposed language, which is largely consistent with proposals previously advanced by ELSN. We offer the following suggestions to provide additional protection to the state’s most vulnerable population against financial abuse, while ensuring proper due process protections.

1. General Business Law and Banking Law Definitions

ELSN is committed to protecting populations who are physically or intellectually impaired. However, in order to ensure that the State does not unjustly limit the rights of the physically or intellectually challenged, the ELSN recommends revising the Executive’s proposal to not extend beyond “vulnerable elderly individuals.” Including those individuals who are under 65 but physically or intellectually challenged may lead to discriminatory limitations against these populations. Moreover, this language can result in the undue restriction of the lives of the disabled and special needs populations. Accordingly, we suggest that all references to “eligible adult” be modified to “vulnerable elderly person” throughout Section II. ELSN supports limiting the age of the vulnerable elderly person to sixty-five years or older and suggest that the proposal more robustly defines a “*vulnerable elderly person*” as *a person who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional impairment to the extent that the person is incapable of adequately managing their own resources or protect themselves from financial exploitation without assistance from others.*

2. Application and Duration of Transaction Holds; Notice to Be Provided

ELSN supports the Executive’s proposed language regarding the application of transaction holds. If it is reasonably believed that financial exploitation has occurred, a transaction hold can be placed on such transaction. This language will allow for continued payment of prearranged

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charges and other expenses that may need to be paid while an investigation is pending. Additionally, the vulnerable senior can still have access to cash during this time to pay for groceries or other incidentals.

ELSN also supports setting the transaction hold at fifteen business days after its application and agrees with the included exceptions. To ensure appropriate due process, the language should require notice to interested parties authorized to transact business on the account in question. Should a court decide to prolong the transaction hold, notice shall be given to the principal account holder, the alleged exploiter and the proposed recipient of the fund that the establishment of specific procedures to ensure that proper investigation has been conducted before extending a transaction hold or releasing it, affords maximum protection of vulnerable elderly individuals. It is important to stress that the notice should be provided to all interested parties. We suggest “including the vulnerable elderly individual” in the legislation in order to acknowledge the due process rights of the account holder.

Recognizing that these sections require that notification be made in writing, we believe that specific guidelines should be established for such notice to be implemented. The purpose of the notice requirements are integral to affording real protection to the vulnerable elderly person, as such notice serves to alert interested parties that there may be incidents of financial abuse. Moreover, implementation of notice requirements among the banking and financial institutions must be consistent to be effective. Additionally, to protect the constitutional due process rights of vulnerable seniors, the proposal should incorporate specific procedures for providing notice, including service of said notice upon the parties affected, and other forms of follow-up communication, such as telephone calls or electronic communications. Since the financial and banking institutions have broad discretion to place a transaction hold, the account holder has the right to know if this is being done. ELSN recommends the following insertion to the Executive’s proposal to achieve that goal:

Notice shall be made by the following methods: (A) personal delivery or overnight delivery service to all parties authorized to transact business on the account for which the transaction hold was placed and (B) telephone, text, email message or other electronic communication medium to all parties that provided contact information, and multiple notice attempts if the bank does not receive confirmation that the foregoing notice has been received.

3. Reporting Requirements When a Transaction Hold has been Initiated

There must be specific guidelines regarding mandatory reporting by banks and financial institutions to adult protective services or a law enforcement agency. ELSN supports establishing reporting requirements in conjunction with the amended Section 352(m) Section 3(a) of the General Business Law and the proposed new section 4-d(2)(a) of the Banking Law, authorizing an employee of a banking or financial institution to place a transaction hold on a particular transaction if there is reasonable belief of financial exploitation. Specifically, we support the following provisions of Sections (c)(ii) under both the General Business Law and the new proposed section of the Banking Law:

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- Mandated reporting no less than one business day
- Reporting of basis for belief that the transaction is the subject of financial exploitation
- Report to adult protective services and law enforcement
- Upon request by adult protective services or law enforcement, information and documents must be provided within three business days.

4. Training and Education

To ensure continuity of training and education in addressing issues of financial exploitation, specific guidelines need to be required. Accordingly, we propose the following additional language:

Training and education. 1. The superintendent, in consultation with the director of the office for the aging, the director of the bureau of adult protective services within the office of children and family services, the commissioner of the office of people with developmental disabilities and the director of the office of victim services, shall develop a financial exploitation training and education program for banking institutions as defined in section four hundred seventy-three of the social services law. The superintendent shall also consult with elder advocacy groups and disability rights organizations that possess specialized knowledge in the prevention and/or identification of financial exploitation, advocacy groups that possess specialized knowledge in developmental disabilities, diseases and other conditions that may impair mental and cognitive function, instructors from organizations that provide services to vulnerable elderly persons that may have experience in identifying financial exploitation, and organizations that provide services to individuals with developmental disabilities.

2. Participation in the financial exploitation training and education program shall be voluntary by the banking institution and the superintendent shall not require, by regulation of otherwise, that any director, officer or any other person affiliated with a banking or institution, participate in or attend such training and education program.

3. The financial exploitation training and education program shall be designed to provide information, training and education on how to identify, help prevent and report the financial exploitation of a vulnerable elderly person as defined in section 260.31 of the Penal Law.

4. The superintendent shall make the materials and instruction of the financial exploitation training and education program available to all banking institutions across the state at no cost, and shall further make such available via both live instruction platforms as well as through online instructional presentations accessible through the websites of the department, the office for the aging, the office of children and family services, the office of people with developmental disabilities and the office of victim services.

5. Each banking institution shall have policies and procedures in place for the banking institution to make the notification required under Subsection 9(e)(i); and for the

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banking institution to place the temporary account hold and submit the report required under Subsection 9(e)(ii) of Section 473 of the social services law. The policies and procedures adopted under this Subsection shall include language that the banking institution may report the suspected financial exploitation to other appropriate agencies and entities in addition to the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

5. Immunity

ELSN supports the inclusion of the immunity protections for a banking or financial institution that places a transaction hold in good faith.

6. Social Services Law Amendments

The amendments to the Social Services Law would establish important guidelines for social services officials to report information that financial exploitation has occurred to appropriate law enforcement agencies and to notify a financial or banking institution involved in the relevant financial transactions of the need to apply a transaction hold. Including this section will provide additional protection to vulnerable elderly adults so that even if a financial or banking institution is not yet aware of financial exploitation, a transaction hold can be applied based upon notification from the proper authorities.

For the above reasons, the New York State Bar Association Elder Law and Special Needs Section SUPPORTS Part II of S.8308/A.8808 and respectfully requests consideration of ELSN's detailed recommendations.

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