

FINANCIAL EXPLOITATION PREVENTION ACT

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**Senate Bills 464 (S-1), 465, and 862 as reported
from House committee**

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Peter J. Lucido

House Committee: Judiciary

Senate Committee: Insurance and Banking

Complete to 12-16-20

(Enacted as Public Acts 344, 345, and 346 of 2020)

SUMMARY:

Senate Bill 464 would create a new act, the Financial Exploitation Prevention Act, which would require financial institutions such as banks and credit unions to have a policy concerning detecting and reporting financial exploitation of their customers or members and would allow the institutions to freeze transactions or assets under certain circumstances. Senate Bills 465 and 862 would amend the Social Welfare Act to facilitate implementation of the new act.

Senate Bill 464 would require a *financial institution* to implement a policy for training employees to recognize signs of *covered financial exploitation* and for reporting that activity to a law enforcement agency or Adult Protective Services (APS).¹

Financial institution would mean a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by a U.S. government agency and that maintains a principal or branch office in Michigan under state or federal law.

Covered financial exploitation would either of the following performed through deception, manipulation, coercion, intimidation, or improper leveraging of a *caregiver* relationship:

- A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.
- A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that results or is intended to result in depriving another individual of rightful access to or use of benefits, resources, belongings, or assets.

Caregiver would mean a parent or other relative responsible for the health and safety of an individual, or a guardian, conservator, or any other person with legal or fiduciary obligations to an individual.

The policy would have to include at least training and procedures concerning vulnerable adults, but it could apply to others, and it would have to provide for all of the following:

- Employee training on all of the following:
 - Common types of covered financial exploitation.
 - Signs of potential covered financial exploitation.

¹ https://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_50647---,00.html

- Relevant federal guidance on elder financial exploitation.
- The procedures described below.
- Procedures when covered financial exploitation is suspected or detected.
- Procedures when, after examination or investigation, covered financial exploitation is no longer suspected.
- Procedures for delaying or placing a freeze on transactions or assets if covered financial exploitation is suspected or detected.
- Procedures for reporting covered financial exploitation to a law enforcement agency or APS. The policy would have to designate one or more employees to make this report. The policy would have to require the following to be considered in determining whether and where to make a report:
 - Relevant federal guidance on elder financial exploitation and applicable employee training.
 - The safety of employees, the affected customer, or other customers.
 - The need and ability to preserve funds or assets of the affected customer.
 - Whether the financial institution can tell that the affected customer is an adult in need of protective services (that is, remedial, social, legal, health, mental health, or referral services in response to alleged harm or threatened harm because of abuse, neglect, or exploitation).
- A citation indicating that the policy was drafted to comply with the bill.

Reports

A report of covered financial exploitation would have to include the name of the alleged victim, a description of the covered financial exploitation, and a contact for notices described below. Law enforcement or APS would have to make a written record of reports made over the phone.

Within 10 business days after receiving a report, the law enforcement agency or APS would have to provide written notification to the financial institution's designated contact that clearly indicates whether a reported incident is under investigation (or has been referred to a law enforcement agency for investigation). As soon as practicable after an investigation, the law enforcement agency or APS would have to notify the financial institution of the disposition of the reported incident.

Within 10 business days after receiving a report, the law enforcement agency or APS would also have to notify the county prosecutor in a manner prescribed by the attorney general that would have to include at least a copy of each report and the response to, or actions taken based on, the report by the law enforcement agency or APS. If a financial institution cannot communicate with a law enforcement agency or APS to make a report or if it does not receive notification described above from the agency or APS, it could itself notify the prosecutor in a manner prescribed by the attorney general.

A law enforcement agency, APS, or prosecutor could not disclose, without consent, the identity of an individual or financial institution making a report, or the identity or personal or account information of the subject of a report, except for disclosures made when those entities refer reports to one another or a disclosure required in a civil or criminal proceeding. This information would also be exempt from disclosure under the Freedom of Information Act (FOIA).

Transaction delay and freeze on assets

A financial institution that suspects or detects covered financial exploitation could delay the related transaction for further investigation, and if the financial institution still suspected covered financial exploitation after investigation, it could continue to delay related transactions or place a freeze on any transactions or assets related to the customer's accounts, individually or jointly held. Any delay or freeze would have to abide by the terms of an agreement between the financial institution and the customer. In the absence of an applicable agreement, the financial institution could maintain a delay or freeze for up to 10 business days or according to the terms of an applicable court order.

If a financial institution is notified that the covered financial exploitation it reported is under investigation, it could extend a delay or freeze until either it is informed of the dismissal of the reported incident or it reasonably believes that there is no continued risk of covered financial exploitation of the targeted individual, whichever is later.

A financial institution could process a transaction necessary to preserve the health, safety, or financial well-being of a customer during a delay or freeze, unless that transaction is related to the suspected covered financial exploitation or the financial institution is directed otherwise by court order.

Enforcement of the act

The bill could be enforced only by the state or federal regulatory agency that authorized the financial institution and that has examination and enforcement authority over it (as defined in the bill). For a financial institution organized under the laws of another state or U.S. territory that maintains one or more branch offices in Michigan, only the Michigan regulatory agency that has or shares examination and enforcement authority over its operations in this state could enforce the bill.

Except with regard to the examination and enforcement authority of the Department of Insurance and Financial Services or a relevant federal regulatory agency, a financial institution and its employees, officers, directors, or affiliates would be immune from any liability or penalty under law or regulation of this state or a local unit of government for an action, determination, omission, or process under the bill or a policy governed by the bill.

The Federal Deposit Insurance Corporation or Federal Reserve System could refer a suspected violation of the bill to an appropriate agency or take appropriate action under their examination and enforcement authority.

Senate Bills 465 and 862 would amend the Social Welfare Act to allow a county department of social services to notify a financial institution of the status of a report of suspected abuse, neglect, or exploitation that was made by that financial institution (SB 465) and to make the act's FOIA provisions subject to the Financial Exploitation Prevention Act (SB 862).

MCL 400.11b (SB 465)

MCL 400.11d (SB 862)

Senate Bills 464 and 862 would each take effect 270 days after being enacted.

FISCAL IMPACT:

Senate Bill 464 would be unlikely to have a significant fiscal impact on the Department of Insurance and Financial Services (DIFS) or on law enforcement entities in this state. The bill would vest DIFS and federal regulators with the ability to enforce the act. Costs for DIFS to enforce the bill are currently indeterminate, but would likely be small in scope. The bill would not have a significant fiscal impact on any law enforcement entities, as provisions of the bill would likely not require additional resources within law enforcement entities.

The bills would likely create minor costs for Adult Protective Services in the Department of Health and Human Services (DHHS), resulting from the implementation of policies within SBs 464 and 465.

Senate Bill 862 would not have a significant fiscal impact on any unit of state or local government.

POSITIONS:

A representative of the Michigan Bankers Association testified in support of the bills.
(12-15-20)

The Michigan Credit Union League indicated support for the bills. (12-15-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.