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Senate Bill 464 (Substitute S-1)
Senate Bill 465 (as introduced 8-28-19)
Senate Bill 862 (as introduced 4-24-20)
Sponsor: Senator Peter J. Lucido
Committee: Insurance and Banking

Date Completed: 12-7-20

CONTENT

Senate Bill 464 (S-1) would enact the "Financial Exploitation Prevention Act" to do the following:

- Require a financial institution to develop and implement a policy for training relevant employees to recognize signs of covered financial exploitation.
- Require a policy to provide certain information, including procedures to follow when covered financial exploitation was found and designation of one or more employees to make a report regarding the covered financial exploitation to a law enforcement agency or Adult Protective Services (APS).
- Require a report of financial exploitation or suspected financial exploitation to include certain information, including the name of the individual believed to be the victim, a description of the suspected or detected covered financial exploitation, and a designated contact for required notices if the reporter were a financial institution.
- Require a law enforcement agency or APS to notify, within 10 days after it received a report of suspected or detected covered financial exploitation, the financial institution whether a reported incident was under investigation or had been referred for investigation.
- Require a law enforcement agency or APS, within 10 days after it received a report to notify the office of the county prosecutor.
- Prohibit a law enforcement agency, APS, or county prosecutor from disclosing the identity of an individual or financial institution that made a report without the individual's or financial institution's consent.
- Allow a financial institution to delay, if possible, a related transaction for further investigation or examination of available facts, if a financial institution suspected or had detected covered financial exploitation.
- Specify that only the State or Federal regulatory agency that authorized the financial institution to organize and commence business in its current form and that had examination and enforcement authority over that financial institution could enforce the proposed Act.
- Specify that a financial institution would be immune from liability or penalty under law or regulation of Michigan or a local unit of government for an action or process under the Act, subject to certain exceptions.

Senate Bill 465 would amend the Social Welfare Act to allow a county department of social services to inform a financial institution that made a report of suspected abuse, neglect, or exploitation of the status of an investigation.

Senate Bill 862 would amend the Social Welfare Act to specify that a provision requiring a writing prepared, owned, used, in the possession of, or retained by the Department of Health and Human Services (DHHS) in the performance of its duties under the Act to be made available to the public in compliance with the Freedom of Information Act would apply except as provided in the Financial Exploitation Prevention Act.

Senate Bills 465 and 862 are tie-barred to Senate Bill 464. Each bill would take effect 270 days after its enactment.

Senate Bill 464 (S-1) and 465 are described in greater detail below.

Senate Bill 464 (S-1)

Definitions

"Adult Protective Services" would mean the office, division, or unit under the DHHS that is charged with investigation, abuse, neglect, or exploitation of vulnerable persons under the Social Welfare Act.

"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.

"Covered financial exploitation" would mean financial exploitation of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

"Examination and enforcement authority" would mean one of the following:

- For the Department of Insurance and Financial Services, any applicable authority under the Credit Union Act or the Banking Code.
- For the National Credit Union Administration, any and all applicable authority provided under the Federal Credit Union Act.
- For the Office of the Comptroller of Currency, any and all applicable authority under 12 USC 1 to 5710.
- For the Federal Deposit Insurance Corporation, any and all applicable authority under 12 USC 1811 to 1835a.
- For the Federal Reserve System, any and all applicable authority under 12 USC 221 to 522.

(Title 12 of the US Code generally governs banks and banking.)

"Financial exploitation" would mean either of the following:

- 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.

"Financial institution" would mean a financial institution as defined in Section 4 of the Michigan Strategic Fund Act: 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 an agency of the United States government and that maintains a principal office or branch office in this State under the laws of Michigan or the U.S.

"Law enforcement agency" would mean a policy agency of a city, village, township, or county, or the Michigan State Police.

"Unauthorized" would mean without permission or utilizing permission obtained from a person through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

"Vulnerable adult" would mean an adult who, because of mental or physical impairment or advanced age, is unable to protect himself or herself from covered financial exploitation.

Training Policy

The proposed Act would require a financial institution to develop and implement a policy for training relevant employees to recognize signs of covered financial exploitation of the institution's members or customers, and for reporting that activity to a law enforcement agency or APS. A training policy, at minimum, include training on and procedures for reporting covered financial exploitation of vulnerable adults, but also could include any other categories of potentially affected members or customers or apply generally to all of the financial institution's members or customers and would have to provide for all of the following:

- Procedures to follow when covered financial exploitation of a member or customer was suspected or detected based on available facts.
- Procedures to follow when, after examination or investigation of available facts, covered financial exploitation of a member of customer was no longer suspected.
- Procedures to follow for delaying or placing a freeze on transaction or assets relative to a member's or customer's accounts, individually or jointly held, if financial exploitation were found or suspected.
- Except as otherwise provided or prohibited by Federal law, reporting of suspected or detected covered financial exploitation of a member or customer to which the policy created under the Act applied to a law enforcement agency or APS.
- Designation of one or more employees to make a report of financial exploitation or suspected financial exploitation to a law enforcement agency or APS.
- A citation to the Act, indicating that the policy was drafted to comply with the Act.

The policy also would have to provide for employee training, including instruction on all of the following:

- Common types of covered financial exploitation.
- Signs of potential covered financial exploitation.
- Relevant Federal advisory opinions or guidance on elder financial exploitation.
- Internal protocols (described above).
- Reporting procedures.

If a financial institution elected to report to APS instead of law enforcement, a report made to APS would have to be made according to procedures established by APS under applicable law. In determining whether and to what entity to make a report, the policy, at a minimum, would have to require:

- Consideration of relevant Federal advisory opinions or guidance on elder financial exploitation and applicable employee training.

- Consideration of the safety of employees, the customer or member that the financial institution believed was the target of covered financial exploitation, or other customers or members.
- Consideration of the need and ability to preserve funds or assets of the customer or member that the financial institution believed was the target of covered financial exploitation.
- Consideration of whether the financial institution could discern, from available facts and knowledge of the member or customer that was the potential victim of financial exploitation, that that member or customer was an adult in need of protective services, as that term is defined in Section 11 of the Social Welfare Act.

Report

Under the Act, a financial institution would not have to make a report of suspected or detected covered financial exploitation under any policy if, after investigation or examination of available facts, the financial institution made a determination that covered financial exploitation had not occurred or was not occurring and no action was necessary.

A report of suspected or detected covered financial exploitation made by a financial institution, or any other person, would have to include the name of the individual believed to be the victim, a description of the suspected or detected financial exploitation, and a designated contact for required notices (described below) if the reporter were a financial institution. If a report were made by telephone, the law enforcement agency or APS that received the report would have to make a written record of the information provided in the telephonic report.

Within 10 business days after it received a report of suspected or detected covered financial exploitation from a financial institution, the law enforcement agency or APS would have to provide written notification to the designated contact of the financial institution that clearly indicated whether a reported incident was under investigation or had been referred to a law enforcement agency for investigation. As soon as practicable after the investigation, the law enforcement agency or Adult Protective Services would have to notify the financial institution of the disposition of the reported incident.

Within 10 business days after it received a report of suspected or detected covered financial exploitation from a financial institution, a law enforcement agency or APS would have to notify the office of the county prosecutor. Notification would have to be made in a manner prescribed by the Attorney General and would have to include, at a minimum, a copy of each report submitted to or committed to written form by the law enforcement agency or APS and the response to, or actions taken based on, the report.

If a financial institution that attempted to make a report of suspected or detected financial exploitation were unable to communicate with a law enforcement agency or APS to do so, or if the law enforcement agency or APS that received a report failed to provide notification to the financial institution, the financial institution could notify the office of the county prosecutor. Notification would have to be made in a manner prescribed by the Attorney General.

A law enforcement agency, APS, or county prosecutor could not disclose the identity of an individual or financial institution that made a report of suspected or detected covered financial exploitation without the individual's or financial institution's consent. However, this provision would not prohibit a disclosure that was made by APS to a law enforcement agency or by a law enforcement agency or APS to the county prosecutor, or a disclosure required in a civil or criminal proceeding. A law enforcement agency, APS, or county prosecutor could not disclose the identify, or personal or account information, of an individual who was the subject of a report of suspected or detected covered financial exploitation as a victim without the individual's consent, except as required above or as required in a civil or criminal proceeding.

The identity of an individual or financial institution that made a report of suspected or detected covered financial exploitation would be exempt from disclosure under the Freedom of Information Act. The identity of the individual who was the suspected or confirmed victim of financial exploitation or his or her personal or account information also would be exempt from disclosure under the Freedom of Information Act to all or any part of a report made under the proposed Act.

Transaction Delay or Freeze

The Act specifies that, except as otherwise provided, if a financial institution suspected or detected covered financial exploitation of a member or customer, the financial institution, if possible, could delay the related transaction for further investigation or examination of available facts. Upon investigation or examination of available facts, if the financial institution still suspected or had detected covered financial exploitation of the member or customer after an investigation or examination of available facts, it either could either continue the delay of related transaction or place a freeze on any transactions or assets related to that member's or customer's accounts, individually or jointly held. Any delay or freeze placed by the financial institution would have to be done according to the terms of any account or service agreement between the financial institution and the member or customer. If there were not an applicable account or service agreement between the financial institution and the member or customer, the financial institution could delay an individual transaction or place a freeze on any transactions or assets relative to that member's or customer's accounts, individually or jointly held, for up to 10 business days, or according to the terms of any applicable court order. If a law enforcement agency or APS informed a financial institution that suspected or detected covered financial exploitation that had been reported was under investigation, the financial institution could extend the term of a transaction delay or freeze until the it was informed of the dismissal of the reported incident or it reasonably believed there was no continued risk of covered financial exploitation of the targeted individual, whichever was later.

A financial institution could provide for the processing of any transaction necessary to preserve the health, safety, or financial well-being of a member or customer during the period of a transaction delay or freeze, unless those transactions were related to the suspected covered financial exploitation or the financial institution was directed otherwise by court order.

Enforceability

Under the Act, except as otherwise provided, only the State or Federal regulatory agency that authorized the financial institution to organize and commence business in its current form and that had examination and enforcement authority over that financial institution could enforce the proposed Act. If a financial institution were organized under the law of another state or territory of the United States and maintained one or more branch offices in Michigan, only the State regulatory agency of Michigan that had or shared examination and enforcement authority over the financial institution's operations in the State could enforce the proposed Act.

In addition to the general authority of a Federal regulatory agency, the Federal Deposit Insurance Corporation or Federal Reserve System could refer a suspected violation of the proposed Act discovered under their examination and enforcement authority to an appropriate agency or take appropriate action under their examination and enforcement authority.

Immunity from Liability

Except with regard to the examination and enforcement authority of the Department of Insurance and Financial Services or a Federal regulatory agency, a financial institution and any of its employees, officers, directors, or affiliates would be immune from liability or penalty

under law or regulation of Michigan or a local unit of government for an action, determination, omission, or process under the Act or under a policy governed by the Act.

Limitations

The Act specifies that it would not create a private right of action against a financial institution, either in law or in equity, for an action or practice under the Act.

The Act also could not be construed as limiting the ability or authority of a financial institution to take otherwise lawful actions under local, State, or Federal law or private agreement; or to report or prevent fraud or other illegal activity related to its operations or the assets of a member or customer that the financial institution held. Additionally, the Act could not be construed as restricting or prohibiting a person, other than an individual who was acting as an employee of a financial institution, that suspected or found that covered financial exploitation of an individual had occurred or was being attempted by another individual from making a report to a law enforcement agency or APS.

The Act also could not be construed as limiting the responsibilities of APS to investigate, as appropriate, alleged abuse of any adult in need of protective services, as that term is defined in Section 11(b) of the Social Welfare Act.

Senate Bill 465

The Social Welfare Act requires a person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services; a law enforcement officer; or an employee of the office of the county medical examiner who suspects or has reasonable cause to believe that an adult has been abused, neglected, or exploited to make an oral report immediately, by telephone or otherwise, to the county department of social services of the county in which the abuse, neglect, or exploitation is suspected of having or believed to have occurred.

Within 24 hours after receiving a report made or information regarding suspected abuse, neglect, or exploitation, the county department must commence an investigation to determine whether the person suspected of being or believed to be abused, neglected, or exploited is an adult in need of protective services. Under the bill, if a financial institution made the report of suspected abuse, neglect, or exploitation, the county department could inform that financial institution of the status of the investigation.

MCL 400.11b (S.B. 465)
400.11d (S.B. 862)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bills 464 (S-1) & 465

The bill would have a negligible fiscal impact on State and local law enforcement agencies. Depending on the volume and magnitude of potential investigations involving financial exploitation of vulnerable person, the bill could have a negative fiscal impact on the Adult Protective Services unit within the DHHS.

Senate Bill 862

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.