

FINANCIAL EXPLOITATION PREVENTION ACT

Act 344 of 2020

AN ACT to require financial institutions to report financial exploitation of their customers or members; to allow financial institutions to freeze customer or member transactions or assets under certain circumstances; to provide immunity from criminal, civil, or administrative liability to financial institutions for actions taken in good faith under this act; and to provide for the powers and duties of certain governmental officers and entities.

History: 2020, Act 344, Eff. Sept. 26, 2021

The People of the State of Michigan enact:

487.2081 Short title.

Sec. 1.

This act shall be known and may be cited as the "financial exploitation prevention act".

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2083 Definitions.

Sec. 3.

As used in this act:

(a) "Adult protective services" means the office, division, or unit under the department of health and human services that is charged with investigation of abuse, neglect, or exploitation of vulnerable persons under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(b) "Caregiver" means 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.

(c) "Covered financial exploitation" means financial exploitation of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

(d) "Examination and enforcement authority" means 1 of the following:

(i) For the department of insurance and financial services, any and all applicable authority provided under the credit union act, 2003 PA 215, MCL 490.101 to 490.601 or the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(ii) For the National Credit Union Administration, any and all applicable authority provided under the federal credit union act, 12 USC 1751 to 1795k.

(iii) For the Office of the Comptroller of the Currency, any and all applicable authority provided under 12 USC 1 to 5710.

(iv) For the Federal Deposit Insurance Corporation, any and all applicable authority provided under 12 USC 1811 to 1835a.

(v) For the Federal Reserve System, any and all applicable authority provided under 12 USC 221 to 522.

(e) "Financial exploitation" means either of the following:

(i) 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.

(ii) 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.

(f) "Financial institution" means a financial institution as defined in section 4 of the Michigan strategic fund act,

1984 PA 270, MCL 125.2004.

(g) "Law enforcement agency" means a police agency of a city, village, township, or county or the Michigan state police.

(h) "Unauthorized" means without permission, or utilizing permission obtained from a person through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

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

(j) "Written" means inscribed in a tangible or electronic medium.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2085 Training for signs of covered financial exploitation of members or customers; requirements; reporting; notification; disclosure and identification of reporting individual.

Sec. 5.

(1) A financial institution shall develop and implement a policy for training relevant employees to recognize signs of covered financial exploitation of members or customers of the financial institution, and for reporting that activity to a law enforcement agency or adult protective services. A policy described in this subsection must, at a minimum, include training on and procedures for reporting covered financial exploitation of vulnerable adults, but may include any other categories of potentially affected members or customers or apply generally to all members or customers of the financial institution and must provide for all of the following:

(a) Employee training, including, but not limited to, instruction on all of the following:

(i) Common types of covered financial exploitation.

(ii) Signs of potential covered financial exploitation.

(iii) Relevant federal advisory opinions or guidance on elder financial exploitation.

(iv) Internal procedures developed under subdivisions (b) to (d).

(v) Reporting procedures under subdivision (f).

(b) Procedures to follow when covered financial exploitation of a member or customer is suspected or detected based on available facts.

(c) Procedures to follow when, after examination or investigation of available facts, covered financial exploitation of a member or customer is no longer suspected.

(d) Procedures to follow for delaying or placing a freeze on transactions or assets relative to a member's or customer's accounts, individually or jointly held, if covered financial exploitation is suspected or detected.

(e) Designation of 1 or more employees to make a report described in subdivision (f).

(f) Except as provided in subsection (2) or as prohibited under federal law, reporting of suspected or detected covered financial exploitation of a member or customer to which the policy created under this act applies to a law enforcement agency or adult protective services. If a financial institution elects to report to adult protective services instead of law enforcement, a report made to adult protective services must be made according to procedures established by adult protective services under applicable law. In determining whether and to what entity to make a report, the policy must, at a minimum, require:

(i) Consideration of relevant federal advisory opinions or guidance on elder financial exploitation and applicable employee training.

(ii) Consideration of the safety of employees, the customer or member that the financial institution believes is the target of covered financial exploitation, or other customers or members.

(iii) Consideration of the need and ability to preserve funds or assets of the customer or member that the financial institution believes is the target of covered financial exploitation.

(iv) Consideration of whether the financial institution can discern, from available facts and knowledge of the member or customer that is the potential victim of covered financial exploitation, that that member or customer is an adult in need of protective services, as that term is defined in section 11(b) of the social welfare act, 1939 PA 280, MCL 400.11.

(g) A citation to this act, indicating the policy was drafted to comply with this act.

(2) A financial institution is not required to make a report of suspected or detected covered financial exploitation under any policy adopted under subsection (1) if, after investigation or examination of available facts, the financial institution makes a determination that covered financial exploitation has not occurred or is not occurring and no

action is necessary.

(3) A report of suspected or detected covered financial exploitation made by a financial institution, or by any other person under section 11(3), must include 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 notices required under subsection (4) if the reporter is a financial institution. If a report under this subsection is made by telephone, the law enforcement agency or adult protective services that receives the report must make a written record of the information provided in the telephonic report.

(4) Within 10 business days after it receives a report of suspected or detected covered financial exploitation from a financial institution under this section, the law enforcement agency or adult protective services that received the report must provide written notification to the designated contact of the financial institution 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 the investigation, the law enforcement agency or adult protective services shall notify the financial institution of the disposition of the reported incident.

(5) Within 10 business days after it receives a report of suspected or detected covered financial exploitation from a financial institution under this section, a law enforcement agency or adult protective services must notify the office of the county prosecutor. Notification must be made in a manner prescribed by the attorney general and must include, at a minimum, a copy of each report submitted to or committed to written form by the law enforcement agency or adult protective services and the response to, or actions taken based on, the report by the law enforcement agency or adult protective services.

(6) If a financial institution that attempts to make a report of suspected or detected covered financial exploitation under this section is unable to communicate with a law enforcement agency or adult protective services to make the report, or if the law enforcement agency or adult protective services that receives a report under this act fails to provide notification to the financial institution under subsection (4), the financial institution may notify the office of the county prosecutor. Notification under this subsection must be made in a manner prescribed by the attorney general.

(7) A law enforcement agency, adult protective services, or county prosecutor must not disclose the identity of an individual or financial institution that makes a report of suspected or detected covered financial exploitation without the consent of the individual or financial institution. However, this subsection does not prohibit a disclosure that is made by adult protective services to a law enforcement agency or by a law enforcement agency or adult protective services to the county prosecutor as required under subsection (5), or a disclosure required in a civil or criminal proceeding. A law enforcement agency, adult protective services, or county prosecutor shall not disclose the identity, or personal or account information, of an individual that is the subject of a report of suspected or detected covered financial exploitation as a victim without that individual's consent, except as required under subsection (5) or as required in a civil or criminal proceeding.

(8) The identity of an individual or financial institution that makes a report of suspected or detected covered financial exploitation under this section is exempt from disclosure under section 13(1)(b)(iv) or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. The identity of an individual that is the suspected or confirmed victim of covered financial exploitation or his or her personal or account information is exempt from disclosure under section 13(1)(a), (b)(iii), or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. This subsection does not limit the applicability of any other exceptions to disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, to all or any part of a report made under this act.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2087 Investigations; delay or freeze on transactions; exception.

Sec. 7.

(1) Except as otherwise provided in this subsection, and subject to subsection (3), if a financial institution suspects or detects covered financial exploitation of a member or customer, the financial institution may delay the related transaction for further investigation or examination of available facts. Upon investigation or examination of available facts, if the financial institution still suspects or has detected covered financial exploitation of the member or customer, the financial institution may either continue the delay of related transactions under this subsection or place a freeze on any transactions or assets related to that member's or customer's accounts, individually or jointly held, as provided in this subsection. Any delay or freeze placed by the financial institution must be done according

to the terms of any account or service agreement between the financial institution and the member or customer. If there is not an applicable account or service agreement between the financial institution and the member or customer, the financial institution may 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, under this section for up to 10 business days, or according to the terms of any applicable court order.

(2) If a financial institution is informed by a law enforcement agency or adult protective services under section 5(4) that suspected or detected covered financial exploitation that has been reported is under investigation, the financial institution may extend the term of a transaction delay or freeze until the financial institution is informed of the dismissal of the reported incident or the financial institution reasonably believes there is no continued risk of covered financial exploitation of the targeted individual, whichever is later.

(3) A financial institution may 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 are related to the suspected covered financial exploitation or the financial institution is directed otherwise by court order.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2089 Examination and enforcement authority.

Sec. 9.

(1) Except as provided in subsections (2) and (3), only the state or federal regulatory agency that authorized the financial institution to organize and commence business in its current form and that has examination and enforcement authority over that financial institution may enforce this act.

(2) If a financial institution is organized under the laws of another state or territory of the United States and maintains 1 or more branch offices in this state, only the state regulatory agency of this state that has or shares examination and enforcement authority over the financial institution's operations in this state may enforce this act.

(3) In addition to the general authority of a federal regulatory agency described in subsection (1), the Federal Deposit Insurance Corporation or Federal Reserve System may refer a suspected violation of this act discovered under their examination and enforcement authority to an appropriate agency described in subsection (1) or (2) or take appropriate action under their examination and enforcement authority.

(4) Except with regard to the examination and enforcement authority of the department of insurance and financial services or a federal regulatory agency described in subsection (1), (2), or (3), a financial institution and any of its employees, officers, directors, or affiliates are 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 this act or under a policy governed by this act.

(5) There is no private right of action against a financial institution, or any of its employees, officers, directors, or affiliates, either in law or in equity, for an action, determination, omission, or practice under this act or under a policy governed by this act.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2091 Construction of act.

Sec. 11.

(1) This act shall not be construed as limiting the responsibilities of a law enforcement agency to enforce the laws of this state or as precluding a law enforcement agency from reporting and investigating, as appropriate, alleged criminal conduct.

(2) This act shall 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 are held by the financial institution.

(3) This act shall not be construed as restricting or prohibiting a person, other than an individual who is acting as an employee of a financial institution, that suspects or finds that covered financial exploitation of an individual has occurred or is being attempted by another individual from making a report to a law enforcement agency or adult protective services.

(4) This act shall not be construed as limiting the responsibilities of adult protective services 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, 1939 PA 280, MCL 400.11.

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