

NAIFA Oregon

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Issues with SB 95-1

Page 1 line 21:

Immediately is defined in Black's Law Dictionary as:

1. at once; instantly
2. without any intervening time or space:

Does this mean a qualified individual must drop everything he or she is doing and file a report? If not, why use a word that means that?

Section 3 generally:

This bill treats advisors doing the same task in different manners. As example;

Person 1 works for an investment company or life insurance company. He/she has a client, an elderly widow who has a child who is receiving large monthly payments from the mother. The child seems to do no work for the mother other than being named as a third party on the investment accounts. The mother is aware of these payments and has authorized them. Person 1 would need to report this under SB 95-1, or be subject to penalty.

Person 2 works for a Credit Union or Bank as an investment advisor. He/she has the same client as Person 1, who is a savvy investor and has diversified her assets. The payments being made to the child are being drawn from the bank/credit union account. The investment advisor is aware of these withdrawals. This bill would not require a report by Person 2 because they work for a "financial institution" as exempted from the bill.

Person 1 in this example is a "qualified individual", yet Person 2 is not, even though they do exactly the same job for different and competing companies. In all likely hood, Person 1 would lose this client for following the law, while Person 2, who had direct knowledge of what was happening because the money was coming from that institution, would have no requirement to report.

Questions about implementation

Investment advisors are not subject to continuing education to maintain their license. How does DCBS plan on educating salesmen, investment advisors and other qualified individuals as to the requirements under this bill?

Definitions for SB 95-1

ORS124.050

(4) “Financial exploitation” means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

ORS 124.100

(g) “Vulnerable person” means:

(A) An elderly person;

(B) A financially incapable person;

(C) An incapacitated person; or

(D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person’s physical or mental impairment.

ORS 706.008

(9) “Financial institution” means an insured institution, an extranational institution, a credit union as defined in ORS 723.006, an out-of-state credit union under ORS 723.042 or a federal credit union.

(31)(a) “Trust company” means a company that is authorized under the provisions of ORS chapter 709 to transact trust business, including the trust department of a bank.

(b) “Trust company” does not include a corporation that a United States Bankruptcy Court appoints to serve as a bankruptcy trustee under Title 11, United States Code, during a time in which the corporation is acting as a bankruptcy trustee.

