

Enrolled Senate Bill 95

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CHAPTER

AN ACT

Relating to reporting of suspected financial abuse; creating new provisions; and amending ORS 59.995.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 7 of this 2017 Act are added to and made a part of ORS 59.005 to 59.451.

SECTION 2. As used in sections 2 to 7 of this 2017 Act:

(1)(a) "Financial exploitation" means:

(A) Wrongfully taking assets, funds or property belonging to or intended for the use of another person;

(B) Alarming another person 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 another person; or

(D) Using the income or assets of another person for purposes other than the support and maintenance of the person without the person's consent.

(b) "Financial exploitation" does not include a transfer of money or property that is made for the purpose of qualifying a person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer.

(2) "Financial institution" has the meaning given that term in ORS 706.008.

(3) "Qualified individual" means an individual who is:

(a) A salesperson;

(b) An investment adviser representative; or

(c) A person who serves in a supervisory, compliance or legal capacity for a broker-dealer or state investment adviser, or who is otherwise identified in the written supervisory procedures of a broker-dealer or state investment adviser.

(4) "Trust company" has the meaning given that term in ORS 706.008.

(5) "Vulnerable person" has the meaning given that term in ORS 124.100.

SECTION 3. (1) Except as provided in subsection (4) of this section, a qualified individual who has reasonable cause to believe that financial exploitation of a vulnerable person with

whom the qualified individual comes into contact has occurred, has been attempted or is being attempted shall, as soon as is practicable, notify the Department of Consumer and Business Services, either orally or in writing.

(2) A notification made under subsection (1) of this section must include the following information, if known:

(a) The identity and address of the vulnerable person;

(b) The identity of all persons that the qualified individual believes are responsible for the suspected or attempted financial exploitation; and

(c) The nature and extent of the suspected or attempted financial exploitation.

(3) Upon receipt of a notification under subsection (1) of this section, the department shall:

(a) Immediately forward the notification to the Department of Human Services;

(b) If it reasonably appears that a violation of the Oregon Securities Law or rules adopted thereunder has occurred or is occurring, promptly investigate the suspected or attempted financial exploitation; and

(c) If it reasonably appears that a crime has been committed or attempted, promptly notify a law enforcement agency.

(4) Subsection (1) of this section does not apply to a qualified individual who is employed by a financial institution or trust company.

SECTION 4. (1) If a qualified individual has reasonable cause to believe that financial exploitation of a vulnerable person with whom the qualified individual comes into contact has occurred, has been attempted or is being attempted, the qualified individual may notify any third party who was previously designated by the vulnerable person to receive information from the qualified individual regarding the vulnerable person, or whom the qualified individual is otherwise permitted to notify under state or federal law or customer agreement.

(2) Disclosure may not be made under this section to any third party that is suspected of actual or attempted financial exploitation or other abuse of the vulnerable person.

SECTION 5. (1) A broker-dealer or state investment adviser may delay a disbursement from an account of a vulnerable person or an account on which a vulnerable person is a beneficiary if:

(a) The broker-dealer, the state investment adviser or a qualified individual reasonably believes that the requested disbursement might result in financial exploitation of a vulnerable person; and

(b) The broker-dealer or state investment adviser:

(A) Within two business days of the request for disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, except to any party that is suspected to have engaged in actual or attempted financial exploitation of the vulnerable person;

(B) Within two business days of the request for disbursement, notifies the Department of Consumer and Business Services and the Department of Human Services of the delay and the reason for the delay; and

(C) Conducts an internal review of the suspected financial exploitation and reports the results of the review to the Department of Consumer and Business Services and the Department of Human Services.

(2) A delay of a disbursement under this section may not extend beyond the earlier of:

(a) Fifteen business days after the date on which the broker-dealer or state investment adviser first delayed disbursement of the funds; or

(b) The date on which a determination is made by the broker-dealer or state investment adviser that the disbursement will not result in financial exploitation of the vulnerable person.

(3) Notwithstanding subsection (2) of this section, upon request of the Department of Consumer and Business Services, a delay of a disbursement under this section may extend

beyond 15 business days after the date on which the broker-dealer or state investment adviser first delayed disbursement of the funds, but not beyond the earliest of:

(a) Twenty-five business days after the date on which the broker-dealer or state investment adviser first delayed disbursement of the funds;

(b) The date on which an order terminating the delay is entered by a court of competent jurisdiction; or

(c) The date on which the department issues an order terminating the delay.

(4) The department or a broker-dealer or state investment adviser that initiated a delay of a disbursement under this section may petition a court of competent jurisdiction for an order delaying or enjoining a disbursement of funds or for other protective relief on the grounds that financial exploitation of a vulnerable person is otherwise likely to occur.

SECTION 6. Qualified individuals, broker-dealers and state investment advisers are not liable under state law for the following actions, if performed in good faith, with reasonable cause and with the exercise of reasonable care:

(1) Disclosing information under section 3, 4 or 7 of this 2017 Act;

(2) Failing to notify a vulnerable person of a disclosure of information under section 3, 4 or 7 of this 2017 Act; or

(3) Delaying a disbursement under section 5 of this 2017 Act.

SECTION 7. (1) Upon request of the Department of Consumer and Business Services, the Department of Human Services or a law enforcement agency, a broker-dealer or state investment adviser shall provide copies of records related to any suspected financial exploitation of a vulnerable person to the requester. The records may include historical records if relevant to suspected financial exploitation of a vulnerable person.

(2) A record made available to an agency under this section is not a public record for purposes of ORS 192.410 to 192.505.

(3) Nothing in this section limits the authority of the Department of Consumer and Business Services to access or examine the books and records of broker-dealers and state investment advisers as otherwise provided by law.

SECTION 8. ORS 59.995 is amended to read:

59.995. (1)(a) **Except as provided in paragraph (b) of this subsection**, in addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets [in] the violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than \$20,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(b) **Notwithstanding paragraph (a) of this subsection**, any person who violates or who procures, aids or abets the violation of section 3 of this 2017 Act or of any rule adopted by the director for administration of sections 2 to 7 of this 2017 Act shall be subject to a penalty of not more than \$1,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation **described in subsection (1)(a) of this section** is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$100,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) This section does not apply to a failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant to ORS 59.175 (8), nor to a violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3), 59.165 (7) or 59.175 (8).

Passed by Senate May 1, 2017

Repassed by Senate June 19, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2017

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Dennis Richardson, Secretary of State