



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor
MEMORANDUM

John McNeal
SCPD Director

DATE: June 21, 2017

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: H.B. 162 (Financial Exploitation)

This legislation was introduced on May 9, 2017. As of May 30, it awaited action by the House Judiciary Committee.

As background, legislation (H.B. No. 417) was enacted in 2014 which amended the Adult Protective Services law. That bill authorized covered financial institutions to freeze transactions if they suspected financial exploitation, report to the State, and provide copies of records to the State and law enforcement agencies without a subpoena. Financial institutions implementing the law were accorded immunity. See codification at 31 Del.C. §3910. Although the original H.B. No. 417 covered “broker dealers”, “investment advisors”, and “federal covered advisors”, the bill was amended prior to enactment to delete coverage of these entities. In 2015, H.B. No. 17 was enacted which added these entities into the statutory scheme resulting in the current, broad definition of “financial institution” subject to the financial exploitation law [31 Del.C. §3902(12)].

H.B. No 162 ostensibly supplements the effects of the prior bills codified in 31 Del.C. Ch. 39. It adopts the same definition of protected consumers - elderly persons and vulnerable adults (lines 6-7). It adopts the same definition of “financial exploitation” (lines 8-20). However, it amends Delaware “securities law” (Title 6) by establishing similar financial exploitation protections covering broker-dealers and investment advisors in the statutory securities laws. Similar to the adult protective services model, H.B. No. 162 authorizes covered financial entities to delay suspicious transactions, notify State agencies, share records with State and law enforcement

agencies, and benefit from immunity when implementing the law.

SCPD has the following observations.

Since both the APS law and the securities law will cover some of the same entities, the standards must be consistent to avoid confusion and enhance compliance. Unfortunately, there are multiple instances of adoption of inconsistent standards. The following is a non-exhaustive set of examples.

First, lines 27-29 require “prompt” notification of APS and the Investment Protection Director (a deputy attorney general pursuant to 6 Del.C. §73-102). In contrast, the APS law does not require “prompt” notice to APS. Notice occurs upon completion of the institution’s investigation or 5 business days after identification of a suspicious transaction. See 31 Del.C. §3910(c).

Second, lines 57-61 authorize a freeze for 15 business subject to the Attorney General requesting an extension to 25 business days after initiation of the freeze. In contrast, the APS law allows the institution to continue to freeze a transaction for 10 business days after filing a report and another 30 business days at the request of the State. See 31 Del.C. §3110 (c).

Third, lines 51-53 give the financial institution 7 business days after completion of its investigation to share its results with APS. In contrast, the APS law requires reporting upon completion of its investigation, not within 7 business days of completion of the investigation. See 31 Del.C. §3110(c).

Fourth, lines 68-71 authorize the financial institution to share records with APS and law enforcement. This may omit the Attorney General’s Office. In contrast, the APS law explicitly authorizes the sharing of records with “the prosecuting attorney’s office” as distinct from “law enforcement”. See 31 Del.C. §3110(c).

SCPD is endorsing the concept of the legislation subject to the sponsors’ review of the above inconsistencies.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Matthew Denn, Attorney General
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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