



2019 SENATE BILL 429

September 17, 2019 - Introduced by Senators TESTIN, CARPENTER, BERNIER, COWLES, FEYEN, JACQUE, LEMAHIEU, MARKLEIN, OLSEN, PETROWSKI, STROEBEL and WIRCH, cosponsored by Representatives MACCO, WITTKE, BOWEN, BRANDTJEN, DITTRICH, DUCHOW, EDMING, GUNDRUM, HORLACHER, JAMES, KATZMA, KNODL, KRUG, KULP, KURTZ, MAGNAFICI, MURSAU, NOVAK, PETERSEN, PETRYK, PLUMER, QUINN, RAMTHUN, ROHRKASTE, SCHRAA, STEFFEN, SUMMERFIELD, THIESFELDT, TITTL, TRANEL, TUSLER and SKOWRONSKI. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT to create** 224.46 of the statutes; **relating to:** financial exploitation of
2 vulnerable adults.

Analysis by the Legislative Reference Bureau

This bill allows financial service providers to refuse or delay financial transactions when financial exploitation of a vulnerable adult is suspected. The bill authorizes financial service providers to take certain other actions to prevent or detect financial exploitation of vulnerable adults.

Under current law, upon receiving a report of alleged abuse, financial exploitation, neglect, or self-neglect of any person age 60 or older who has experienced, is experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (an elder adult at risk), the elder-adult-at-risk agency in a county must respond by investigating or must refer the report to another agency for investigation. Similarly, if the adult-at-risk agency in a county has reason to believe that an adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (an adult at risk) is the subject of abuse, financial exploitation, neglect, or self-neglect, the adult-at-risk agency may respond by investigating to determine whether the adult at risk is in need of protective services. "Financial exploitation" includes obtaining an individual's money or property by deceiving or enticing the individual or by coercing the individual to give, sell at less than fair value, or convey money or property against his or her will without his or her informed consent, and also includes certain crimes such as theft and forgery.

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Under this bill, if a financial service provider reasonably suspects that financial exploitation of an adult at risk or an individual who is 60 years of age or older (together, vulnerable adult) has occurred or been attempted, the financial service provider may, but is not required to, refuse or delay a financial transaction on an account of the vulnerable adult or on which the vulnerable adult is a beneficiary or on an account of a person suspected of perpetrating financial exploitation. The definition of “financial service provider” under the bill includes financial institutions, mortgage bankers and brokers, other types of lenders, and check cashing services. In addition, a financial service provider may, but is not required to, refuse or delay a financial transaction if an elder-adult-at-risk agency, adult-at-risk agency, or law enforcement agency provides information to the financial service provider that financial exploitation of a vulnerable adult may have occurred or been attempted. The bill requires certain notice if a financial service provider refuses or delays a financial transaction under these circumstances and establishes certain time limits applicable to the refusal or delay of the financial transaction. In addition, the bill allows a financial service provider to refuse to accept a power of attorney of a vulnerable adult if the financial service provider reasonably suspects that the vulnerable adult may be the victim of financial exploitation.

The bill also provides a process for a financial service provider to create a list of persons that a vulnerable adult authorizes to be contacted if the financial service provider reasonably suspects that the vulnerable adult is a victim of financial exploitation and authorizes the financial service provider to convey its suspicions of financial exploitation to certain persons, including persons on this list.

Under the bill, a financial service provider is immune from criminal, civil, and administrative liability for all of the following: 1) refusing or not refusing, or delaying or not delaying, a financial transaction; 2) refusing to accept or accepting a power of attorney; 3) contacting a person or not contacting a person to convey a suspicion of financial exploitation; and 4) any action based on a reasonable determination related to the preceding items 1 to 3.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 224.46 of the statutes is created to read:

2 **224.46 Financial exploitation of vulnerable adults. (1) DEFINITIONS.** In
3 this section:

4 (a) “Account” means funds or assets held by a financial service provider,
5 including a deposit account, savings account, share account, certificate of deposit,

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1 trust account, guardianship or conservatorship account, or retirement account, and
2 also including an account associated with a loan or other extension of credit.

3 (b) “Adult at risk” has the meaning given in s. 55.01 (1e).

4 (c) “Adult-at-risk agency” has the meaning given in s. 55.01 (1f).

5 (d) “Elder-adult-at-risk agency” has the meaning given in s. 46.90 (1) (bt).

6 (e) “Financial exploitation” has the meaning given in s. 46.90 (1) (ed).

7 (f) “Financial institution” has the meaning given in s. 214.01 (1) (jn).

8 (g) “Financial service provider” means any of the following engaged in or
9 transacting business in this state:

10 1. A financial institution.

11 2. A mortgage banker, mortgage broker, or mortgage loan originator, as defined
12 in s. 224.71 (3), (4), or (6).

13 3. A seller of checks, as defined in s. 217.02 (9).

14 4. A community currency exchange, as defined in s. 218.05 (1) (b).

15 5. A payday loan licensee under s. 138.14.

16 6. A title loan licensee under s. 138.16.

17 7. A lender licensed under s. 138.09.

18 8. An insurance premium finance company, as defined in s. 138.12 (1) (b).

19 9. A sales finance company, as defined in s. 218.0101 (34).

20 (h) “Financial transaction” means any of the following as applicable to the
21 business of, or services provided by, a financial service provider:

22 1. A transfer or disbursement of, or request to transfer or disburse, funds or
23 assets in an account.

24 2. A request to initiate a wire transfer, initiate an automated clearinghouse
25 transfer, or issue a money order, cashier’s check, or teller’s check.

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- 1 3. A request to negotiate a check or other negotiable instrument.
- 2 4. A request to change the ownership of an account.
- 3 5. A request for a loan or other extension of credit or to draw on a line of credit.
- 4 6. A request to modify a loan or other extension of credit or add an authorized
- 5 signer on a line of credit.
- 6 7. A request to issue a debit card or initiate a debit card transaction.
- 7 8. A request to transfer the title to any real property, manufactured home, or
- 8 motor vehicle, or to encumber any real property, manufactured home, or motor
- 9 vehicle.
- 10 (i) "Law enforcement agency" has the meaning given in s. 165.77 (1) (b).
- 11 (j) "Vulnerable adult" means an adult at risk or an individual who is at least
- 12 60 years of age.
- 13 **(2) FINANCIAL SERVICE PROVIDERS MAY REFUSE OR DELAY TRANSACTIONS.** (a)
- 14 Notwithstanding any provision of ch. 403, 404, or 410, if a financial service provider
- 15 has reasonable cause to suspect that financial exploitation of a vulnerable adult may
- 16 have occurred, may have been attempted, or is being attempted, the financial service
- 17 provider may, but is not required to, refuse or delay any of the following:
- 18 1. A financial transaction on an account of the vulnerable adult.
- 19 2. A financial transaction on an account on which the vulnerable adult is a
- 20 beneficiary, including a trust, guardianship, or conservatorship account.
- 21 3. A financial transaction on an account of a person suspected of perpetrating
- 22 financial exploitation.
- 23 (b) 1. Notwithstanding any provision of ch. 403, 404, or 410, a financial service
- 24 provider may also refuse or delay a financial transaction under this subsection if an
- 25 elder-adult-at-risk agency, adult-at-risk agency, or law enforcement agency

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1 provides information to the financial service provider demonstrating that it is
2 reasonable to suspect that financial exploitation of a vulnerable adult may have
3 occurred, may have been attempted, or is being attempted.

4 2. Except as ordered by a court, a financial service provider is not required to
5 refuse or delay a financial transaction when provided with information by an
6 elder-adult-at-risk agency, adult-at-risk agency, or law enforcement agency
7 alleging that financial exploitation of a vulnerable adult may have occurred, may
8 have been attempted, or is being attempted, but may use its discretion to determine
9 whether to refuse or delay a financial transaction based on the information available
10 to the financial service provider.

11 (c) A financial service provider that refuses or delays a financial transaction
12 based on reasonable cause to suspect that financial exploitation of a vulnerable adult
13 may have occurred, may have been attempted, or is being attempted shall do all of
14 the following:

15 1. Except with regard to an account administered by a financial institution in
16 a fiduciary capacity, make a reasonable effort to notify, orally or in writing, one or
17 more parties authorized to transact business on the account.

18 2. If the incident involves financial exploitation of a vulnerable adult, report
19 the incident to the applicable elder-adult-at-risk agency or adult-at-risk agency.

20 (d) No notice under this subsection is required to be provided to any party
21 authorized to conduct business on the account if the party is the suspected
22 perpetrator of financial exploitation.

23 (e) Except as provided in pars. (f) and (g), any refusal by a financial service
24 provider to conduct a financial transaction or delay a financial transaction as
25 authorized by this subsection based on the financial service provider's reasonable

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1 cause to suspect that financial exploitation of a vulnerable adult may have occurred,
2 may have been attempted, or is being attempted expires upon the earliest of any of
3 the following:

4 1. Five business days after the date on which the financial service provider first
5 refused or delayed the financial transaction, unless earlier terminated by a court
6 order.

7 2. The time when the financial service provider reasonably believes that the
8 financial transaction will not result in financial exploitation of a vulnerable adult.

9 3. The time when the customer requesting the transaction has been advised of
10 a potential risk in the transaction and the customer has requested the transaction
11 to continue as long as the customer is not the suspected perpetrator of financial
12 exploitation.

13 (f) A financial service provider may extend the time permitted in this
14 subsection to refuse or delay a financial transaction based on a reasonable suspicion
15 that additional time is needed to investigate the financial transaction or to prevent
16 financial exploitation of a vulnerable adult.

17 (g) A court may enter an order extending the time that a financial service
18 provider shall refuse or delay a financial transaction based on reasonable cause to
19 suspect that financial exploitation of a vulnerable adult may have occurred, may
20 have been attempted, or is being attempted.

21 (h) Notwithstanding any provision of ch. 403, 404, or 410, a financial service
22 provider, or an employee of a financial service provider, acting in good faith is
23 immune from all criminal, civil, and administrative liability for any of the following:

24 1. Refusing or not refusing, or delaying or not delaying, a financial transaction
25 under this subsection.

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1 2. Actions taken in furtherance of the determination made under subd. 1. if the
2 determination was based on a reasonable suspicion.

3 **(3) LIST OF AUTHORIZED CONTACTS.** (a) A financial service provider may offer to
4 a vulnerable adult the opportunity to submit and periodically update a list of persons
5 that the vulnerable adult authorizes the financial service provider to contact when
6 the financial service provider has reasonable cause to suspect that the vulnerable
7 adult is a victim or a target of financial exploitation.

8 (b) A financial service provider, or an officer or employee of the financial service
9 provider, that has reasonable cause to suspect that a vulnerable adult is the victim
10 or target of financial exploitation may convey the suspicion to any of the following
11 if the person is not the suspected perpetrator:

12 1. Any person on the list described in par. (a) if a list has been provided by the
13 vulnerable adult.

14 2. Any co-owner, additional authorized signatory, or beneficiary on the account
15 of the vulnerable adult.

16 3. Any person known by the financial service provider to be a family member,
17 including a parent, spouse, adult child, or sibling.

18 (c) When providing information under this subsection, the financial service
19 provider may limit the information and disclose only that the financial service
20 provider has reasonable cause to suspect that the vulnerable adult may be a victim
21 or target of financial exploitation without disclosing any other details or confidential
22 personal information regarding the financial affairs of the vulnerable adult.

23 (d) The financial service provider may choose not to contact any person on the
24 list provided under par. (a) if the financial service provider suspects that the person
25 or persons are engaged in financial exploitation.

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1 (e) The financial service provider may rely on information provided by the
2 customer in compiling a list of contact persons.

3 (f) A financial service provider, or an employee of a financial service provider,
4 acting in good faith is immune from all criminal, civil, and administrative liability
5 for contacting a person or electing not to contact a person under this subsection and
6 for actions taken in furtherance of that determination if the determination was made
7 based on reasonable suspicion.

8 **(4) FINANCIAL SERVICE PROVIDERS MAY REFUSE POWER OF ATTORNEY.** (a)
9 Notwithstanding s. 244.20, a financial service provider may refuse to accept an
10 acknowledged power of attorney if the principal is a vulnerable adult and the
11 financial service provider has reasonable cause to suspect that the principal is or may
12 be the victim or target of financial exploitation by the agent or person acting for or
13 with the agent.

14 (b) A financial service provider, or an employee of a financial service provider,
15 acting in good faith is immune from all criminal, civil, and administrative liability
16 for refusing to accept a power of attorney or for accepting a power of attorney under
17 this subsection and for actions taken in furtherance of that determination if the
18 determination was based on reasonable suspicion.

19 **(END)**