**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3908**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sandifer and Jefferson

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Introduced in the House on February 17, 2021

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Financial transactions of vulnerable adults

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/17/2021 House Introduced and read first time ([House Journal‑page 10](file:///h:\hj\20210217.docx))

2/17/2021 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 10](file:///h:\hj\20210217.docx))

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**VERSIONS OF THIS BILL**

[2/17/2021](file:///p:\pprever\2021-22\3908_20210217.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8, TO CHAPTER 1, TITLE 35 SO AS TO AUTHORIZE A BROKER‑DEALER, INVESTMENT ADVISER, OR QUALIFIED INDIVIDUAL TO DELAY CERTAIN FINANCIAL TRANSACTIONS IN CASES OF THE SUSPECTED FINANCIAL EXPLOITATION OF A VULNERABLE ADULT, AND TO DEFINE NECESSARY TERMS; TO AMEND SECTION 35‑1‑607, RELATING TO PUBLIC RECORDS NOT AUTHORIZED FOR PUBLIC EXAMINATION, SO AS TO PROVIDE THAT RECORDS DISCLOSED UNDER ARTICLE 8 ARE NONPUBLIC; AND BY ADDING SECTION 43‑35‑87 SO AS TO AUTHORIZE FINANCIAL INSTITUTIONS TO DECLINE CERTAIN FINANCIAL TRANSACTION REQUESTS IN CASES OF THE SUSPECTED FINANCIAL EXPLOITATION OF A VULNERABLE ADULT, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 35 of the 1976 Code is amended by adding:

“Article 8

Protection of Vulnerable Adults from Financial Exploitation

Section 35‑1‑801. As used in this article, unless the context otherwise requires:

(1) ‘Agencies’ means: Adult Protective Services and the Securities Commissioner.

(2) ‘Eligible adult’means:

(a) a person sixty years of age or older; or

(b) a person subject to Section 43‑35‑10(11).

(3) ‘Financial exploitation’means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an eligible adult; or

(b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) obtain control, through deception, intimidation or undue influence, over the eligible adult’s money, assets, or property to deprive the eligible adult of the ownership, use, benefit or possession of his money, assets, or property; or

(ii) convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets, or property.

(4) ‘Qualified individual’means any agent, broker‑dealer, investment adviser representative, investment adviser, or person who serves in a supervisory, compliance, or legal capacity for a broker‑dealer or investment adviser.

(5) ‘Reasonably associated individual’ means any person known to the qualified person to be reasonably associated with the eligible adult or the account.

Section 35‑1‑802. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual promptly shall notify the agencies.

Section 35‑1‑803. A qualified individual, who in good faith and exercising reasonable care, makes a disclosure of information pursuant to Section 35‑1‑802 is immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

Section 35‑1‑804. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult or, if such person has not been designated or cannot be contacted, a reasonably associated individual. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

Section 35‑1‑805. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35‑1‑804 is immune from any administrative or civil liability that might otherwise arise from the disclosure.

Section 35‑1‑806. (A) A broker‑dealer or investment adviser may delay a disbursement from, or a transaction in connection with, an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker‑dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation, that the requested disbursement or transaction may result in financial exploitation of an eligible adult; and

(2) the broker‑dealer or investment adviser:

(a) immediately, but in no event more than two business days after the requested disbursement or transaction is delayed, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

ii. Immediately, but in no event more than two business days after the requested disbursement or transaction is delayed, notifies the agencies; and

(b) continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and provides status updates to the agencies upon request.

(B) Any delay of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the broker‑dealer or investment adviser that the disbursement or transaction will not result in financial exploitation of the eligible adult; or

(2) thirty business days after the date on which the broker‑dealer or investment adviser first delayed the requested disbursement or transaction, unless either of the agencies request that the broker‑dealer or investment adviser extend the delay, in which case the delay shall expire no more than fifty‑five business days after the date on which the broker‑dealer or investment adviser first delayed the disbursement or transaction, unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.

(C) The Richland County Court of Common Pleas may enter an order extending the delay of the disbursement or transaction, or may order other protective relief based on the petition of the Securities Commissioner, Adult Protective Services, the broker‑dealer or investment adviser that initiated the delay under this section, or other interested party.

Section 35‑1‑807. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35‑1‑806 is immune from any administrative or civil liability that might otherwise arise from such delay of a requested disbursement or transaction in accordance with this section.

Section 35‑1‑808. A broker‑dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the agencies or to law enforcement, either as part of a referral to the agencies or to law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section are not public records and are not available for public examination. Nothing in this section shall limit or otherwise impede the authority of the Securities Commissioner to access or examine the books and records of broker‑dealers and investment advisers as otherwise provided by law.”

SECTION 2. Section 35‑1‑607(b) of the 1976 Code is amended by adding a new item (7) to read:

“(7) a record provided to the Securities Commissioner under Section 35‑1‑808.”

SECTION 3. Article 1, Chapter 35, Title 43 of the 1976 Code is amended by adding:

“Section 43‑35‑87. (A) For the purposes of this section, ‘financial institution’ means any bank, credit union, wealth management institution, or other financial services corporation. This section excludes a ‘broker‑dealer’ as defined in Section 35‑1‑102(4) and an ‘investment adviser’ as defined in Section 35‑1‑102(15).

(B) If a financial institution reasonably believes that the financial exploitation of a vulnerable adult has occurred or may occur, then the financial institution may, but is not required to, decline or place on hold any transaction involving:

(1) the account of the vulnerable adult;

(2) an account in which the vulnerable adult is a beneficiary, including a trust or guardianship account; or

(3) the account of a person who is suspected of engaging in the financial exploitation of the vulnerable adult.

(C) A financial institution also may decline or place on hold any transaction pursuant to this section if an investigative entity or law enforcement agency provides information to the financial institution demonstrating that it is reasonable to believe that the financial exploitation of a vulnerable adult has occurred or may occur.

(D) A financial institution is not required to decline or place on hold a transaction pursuant to this section. Such a decision is in the financial institution’s discretion, based on the information available to the financial institution.

(E) Any financial institution that declines or places on hold a transaction pursuant to this section shall:

(1) make a reasonable effort to provide notice, orally or in writing, to all parties authorized to transact business on the account from which the transfer or disbursement was declined or placed on hold; and

(2) report the incident to the appropriate investigative entity in accordance with Section 43‑35‑25.

(3) Notwithstanding the provisions of this subsection a financial institution has no duty to notify any party that is suspected of financial exploitation pursuant to this section.

(F) A refusal to disburse or transfer monies by declining or placing on hold a transaction pursuant to this section must terminate upon the earlier of the:

(1) time at which the financial institution is satisfied that the transaction will not result in the financial exploitation of the vulnerable adult; or

(2) issuance of an order by a court of competent jurisdiction, directing the transfer or disbursal of the monies.

(G) A financial institution may provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to law enforcement agencies or investigative entities responsible for administering the provisions of this article. Such records may include relevant historical records and recent transactions relating to suspected financial exploitation.

(H)(1) A financial institution or an employee of a financial institution is immune from criminal, civil, or administrative liability for declining transactions to disburse monies or disbursing monies pursuant to this section, and for actions taken in furtherance of that determination, including the making of a report or the providing of access to or copies of relevant records to an investigative entity or law enforcement agency, if such determinations and actions were made in good faith and in accordance with the provisions of this section.

(2) A financial institution or an employee of a financial institution is immune from criminal, civil, or administrative liability for a decision to refuse to decline or place on hold a transaction pursuant to this section if the decision to refuse was in good faith and based on the information available to the financial institution or employee.”

SECTION 4. This act takes effect upon approval by the Governor.

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