THE PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

Ala. Code § 8-6-170 et seq. (1975)
Act no. 2016-141
THE ACT: KEY TERMS

- Qualified Individuals
- Vulnerable Adult
- Reasonable Belief
- Financial Exploitation
- Notification
- Delay Disbursement
- Records Requests
- Immunity
QUALIFIED INDIVIDUALS

The law applies to Qualified Individuals:

“Any agent, investment adviser representative, or person who serves in a supervisory, compliance, legal, or associated member capacity of a broker-dealer or investment adviser.”
The law protects **Vulnerable Adults**: 

1. A person 65 years of age or older; and 

2. A protected person included and defined in Chapter 9, Title 38 of the AL Code: “Any person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, persons with intellectual disabilities and developmental disabilities, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.”
FINANCIAL EXPLOITATION

The law mandates reporting of Financial Exploitation:

Broadly defined to include:

- a. The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable adult.

- b. Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable adult, to either of the following:
  
  1. Obtain control through deception, intimidation, or undue influence over the vulnerable adult’s money, assets, or property to deprive the vulnerable adult of the ownership, use, benefit, or possession of his or her money, assets, or property.
  
  2. Convert money, assets, or property of the vulnerable adult to deprive the vulnerable adult of the ownership, use, benefit, or possession of his or her money, assets, or property.
REASONABLE BELIEF

- A belief held by a person with average intelligence and sound mind.

- Person has a reasonable basis for forming the belief:
  - all known considerations relevant to the formation of the belief are taken into account including matters of opinion and
  - those known considerations are objectively assessed
REASONABLE BELIEF

Red Flags which may contribute to a reasonable belief:

- Uncharacteristic and repeated cash withdrawals or wire transfers
- Appearing with new and unknown associates, friends, or relatives
- Uncharacteristic nervousness or anxiety when visiting the office or conducting telephonic transactions
- A lack of knowledge about his or her financial status
- Having difficulty speaking directly with the client or customer
- Unexplained or unusual excitement about a sudden windfall; reluctance to discuss details
- Sudden changes to financial documents such as powers of attorney, account beneficiaries, wills, or trusts
- Closing of accounts without regard to penalties
NOTIFICATION REQUIREMENTS - STATE

- If a qualified individual reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify the ASC and DHR.

- Who: ASC and DHR

- When: Promptly

- How: “Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited” form located on ASC and DHR website. Complete and email a copy to both ASC and DHR.
  - ASC- main page- “Key Events and Information”
  - DHR- “Services” ---”Adult Protective”
In addition to the mandate that firms notify the ASC and DHR of suspected financial exploitation, the law authorizes, but does not require, firms to notify certain third parties including:

- a legal guardian, conservator, co-trustee, successor co-trustee, or agent under power of attorney
- a third party previously designated by the vulnerable adult
- a reasonably associated individual- an individual known to the firm who is reasonably associated with the account.

Note-disclosure may not be made to a designated third party that is suspected of financial exploitation or other abuse of the vulnerable adult.
REPORTING FORM

- ASC/DHR Financial Exploitation Reporting Form
- Complete and email to both ASC and DHR
  - Alabama Securities Commission – adultprotect@asc.alabama.gov
  - Alabama Department of Human Resources- aps@dhr.alabama.gov
A firm MAY delay a disbursement if:
  - the firm reasonably believes after an internal review of the disbursement request that the requested disbursement may result in financial exploitation

Notification Requirements for delayed disbursements:
  - Immediately, but in no event more than 2 business days, the firm must provide written notification to
    - ASC and DHR
    - All parties authorized to transact business on the account
  - Within 7 days, firms must report any additional results of their internal investigation to ASC and DHR.
Any delay of a disbursement expires upon the sooner of:

1. A determination by the firm that the disbursement will not result in financial exploitation
2. Fifteen (15) business days after the date on which the firm first delayed the disbursement UNLESS either the ASC or DHR request that the firm extend the delay
3. If extended, the delay shall expire no more than twenty-five (25) business days after the date on which the delay was first initiated.

Should a delay beyond 25 business days be necessary, a court of competent jurisdiction may enter an order extending the delay or order other protective relief.

The petition may be filed by either the firm, ASC, DHR, or other interested party.
RECORDS REQUESTS

- Firms shall provide access to or copies of all records relevant to the suspected financial exploitation.

- Agencies authorized to received records include DHR, as the agency responsible for administering the state adult protective services, the ASC, and to law enforcement, either as part of a referral or as a request from law enforcement pursuant to an investigation.

- The types of records requested may include records that demonstrate historical account activity and those relating to the current disbursement request.

- Note- all records made available under this section are not public records, as defined by state law.
IMMUNITY PROVISIONS

- A qualified individual that, in good faith, and exercising reasonable care, complies with the law shall be immune from any administrative or civil liability that might otherwise arise from either:
  - Disclosures, in the instance of notifying authorized individuals; and
  - Delays in disbursement

- Note- Federal privacy concerns- which may stem from Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., and its implementing regulations such as the SEC’s Regulation S-P. 17 C.F.R. § 248.1 et seq.
OTHER CONSIDERATIONS

- Reporting logistics
- Jurisdiction- minimum contacts
- Privacy concerns
- Developing policies and procedures
  - Protecting Vulnerable Adults from Financial Exploitation: A Guide for Alabama Broker-Dealer and Investment Adviser Firms
WHAT YOU CAN DO TO PROTECT YOUR CLIENT

- Advanced Directives
- Power of attorney
- Distribution plans
  - Wills
  - Trusts
- Trust third parties
- Maintain communication
Alabama Securities Commission - 334-242-2984
  - Joseph Borg, Director
  - Ed Reed, Deputy Director
  - Amanda Senn, General Counsel
  - Lisa Tolar, Registration Manager
  - Rena Davis, Audit Manager

Alabama Department of Human Resources - 334-242-1310
  - Doris Ball, Director, Adult Protective Services
  - Felicia Brooks, Deputy Attorney General