



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
516 West Lookerman St., Dover, DE 19904  
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

**MEMORANDUM**

**DATE:** June 6, 2017

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Dafne A. Carnright, Chairperson  
GACEC

**RE:** **House Bill No. 162 (Financial Exploitation and the Protection of Vulnerable Adults)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No.162 which provides consumer protection for elderly persons and vulnerable adults. It 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. Council **endorses the concept** of the proposed legislation and would like to share the following observations.

As background, House Bill No. 417 was enacted in 2014 which amended the Adult Protective Services (APS) 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 House Bill 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, House Bill 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)].

Since both the APS law and the securities law will cover some of the same entities, the standards need to 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 five

business days after identification of a suspicious transaction. See 31 Del.C. §3910(c).

Second, lines 57-61 authorize a freeze for 15 business days 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 seven 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 seven 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 Office of the Attorney General. 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).

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.

CC: The Honorable Matthew Denn, Attorney General