

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1782

S.P. 699

In Senate, December 30, 2005

An Act To Prevent Elder and Dependent Adult Financial Abuse

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MAYO of Sagadahoc.

Cosponsored by Representative PERRY of Calais and

Senators: BRENNAN of Cumberland, BRYANT of Oxford, President EDMONDS of Cumberland, SULLIVAN of York, Representatives: BRAUTIGAM of Falmouth, BRYANT of Windham, CUMMINGS of Portland, GLYNN of South Portland.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 9-B MRSA c. 17** is enacted to read:

6 **CHAPTER 17**

8 **REPORTING OF ELDER OR DEPENDENT ADULT FINANCIAL ABUSE**

10 **§171. Short title**

12 This chapter may be known and cited as "the Elder and
Dependent Adult Financial Abuse Reporting Act of 2006."

14 **§172. Reporting of suspected financial abuse of elder or**
dependent adult required

16 1. Definitions. As used in this chapter, unless the
18 context otherwise indicates, the following terms have the
20 following meanings.

22 A. "Dependent adult" means a person 18 years of age or
older and under 65 years of age who resides in this State
24 and has physical or mental limitations that restrict the
person's ability to carry out normal activities or to
26 protect the person's rights, including, but not limited to,
persons who have physical or developmental disabilities or
28 whose physical or mental abilities have diminished because
of age.

30 B. "Elder" means any person residing in this State who is
65 years of age or older.

32 C. "Financial abuse of an elder or a dependent adult" means
34 that a person or entity:

36 (1) Takes, secretes, appropriates or retains real or
personal property of an elder or a dependent adult for
38 a wrongful use or with intent to defraud, or both; or

40 (2) Assists in taking, secreting, appropriating or
retaining real or personal property of an elder or a
42 dependent adult for a wrongful use or with intent to
44 defraud, or both.

46 A person or entity is deemed to have taken, secreted,
appropriated or retained property for a wrongful use if,
48 among other things, the person or entity takes, secretes,
appropriates or retains possession of the property in bad
50 faith.

2 A person or entity is deemed to have acted in bad faith if
4 the person or entity knew or should have known that the
6 elder or dependent adult had the right to have the property
 transferred or made readily available to the elder or
 dependent adult or to the elder or dependent adult's
 representative.

8 For purposes of this paragraph, "representative" means a
10 person or entity that is either a conservator, trustee or
12 other representative of the estate of an elder or a
 dependent adult or an attorney-in-fact of an elder or a
 dependent adult who acts within the authority of the power
 of attorney.

14 D. "Financial institution" means a credit union authorized
16 to do business in this State or a financial institution
18 authorized to do business in this State.

20 E. "Mandated reporter of suspected financial abuse of an
22 elder or a dependent adult" or "mandated reporter" means all
 officers and employees of financial institutions.

24 F. "Suspected financial abuse of an elder or a dependent
26 adult" means knowledge of or observation by a person who is
28 required to report under subsection 2 behavior or unusual
30 circumstances or transactions, or a pattern of behavior or
 unusual circumstances or transactions, that would lead an
 individual with like training or experience, based on the
 same facts, to form a reasonable belief that an elder or a
 dependent adult is the victim of financial abuse.

32 **2. Reporting required.** Any mandated reporter of suspected
34 financial abuse of an elder or a dependent adult who has direct
36 contact with the elder or dependent adult or who reviews or
38 approves the elder or dependent adult's financial documents,
40 records or transactions in connection with providing financial
42 services with respect to the elder or dependent adult and who,
44 within the scope of that mandated reporter's employment or
46 professional practice, has observed or has knowledge of an
48 incident that is directly related to the transaction or matter
 that is within that scope of employment or professional practice
 and that reasonably appears to be financial abuse or, in the case
 of a mandated reporter who does not have direct contact with the
 elder or dependent adult, who reasonably suspects that abuse
 based solely on the information before that mandated reporter at
 the time of reviewing or approving the document, record or
 transaction shall report the known or suspected instance of
 financial abuse by telephone immediately, or as soon as
 practicably possible, and by written report sent within 2 working

days to the local adult protective services agency or the local law enforcement agency.

3. Two or more mandated reporters. When 2 or more mandated reporters jointly have knowledge of or reasonably suspect that financial abuse of an elder or a dependent adult for which a report under subsection 2 is mandated has occurred, and when the mandated reporters are in agreement, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

4. Elder or dependent adult resides in long-term care facility. If the mandated reporter under subsection 2 knows that the elder or dependent adult resides in a long-term care facility, the report under subsection 2 must be made to the long-term care ombudsman or a designee pursuant to Title 22, section 5106, subsection 11-C or to a local law enforcement agency.

5. Allegation not sufficient for reporting requirement. An allegation by an elder or a dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met.

A. The mandated reporter is aware of no other corroborating or independent evidence of the alleged financial abuse of the elder or dependent adult. The mandated reporter is not required to investigate any accusations.

B. In the exercise of the mandated reporter's professional judgment, the mandated reporter reasonably believes that financial abuse of the elder or dependent adult did not occur.

6. Failure to report. A person who fails to report financial abuse under this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged or, if the failure to report is willful, a civil violation for which a fine of not more than \$5,000 may be adjudged. A financial institution that is the employer of the mandated reporter shall pay a fine adjudged under this subsection to the party bringing the action.

7. Fine payable to Attorney General or District Attorney. The fine provided for in subsection 6 is recoverable only in a civil action brought against the financial institution. An action may not be brought under this section by any person other

2 than the Attorney General or a district attorney. Multiple
actions for the fine may not be brought for the same violation.

4 Nothing in this chapter may be construed to limit, expand or
otherwise modify any civil liability or remedy that may exist
6 under this or any other law.

8 **§173. Confidentiality**

10 **1. Reports confidential.** A report made pursuant to section
172 is confidential and may be disclosed only as provided in
12 subsection 2. A person who violates this section commits a Class
E crime.

14 **2. Reports may be disclosed.** Reports of suspected
16 financial abuse of an elder or a dependent adult and information
contained in those reports may be disclosed only to the following:

18 A. Persons or agencies to whom disclosure of information or
20 the identity of the reporting party is permitted; and

22 B. Persons trained and qualified to serve on
multidisciplinary personnel teams, who may disclose to one
24 another information and records that are relevant to the
prevention, identification or treatment of financial abuse
26 of elderly or dependent persons.

28 Except as provided in this paragraph, any multidisciplinary
personnel team or agency that receives information pursuant
30 to this chapter is under the same obligations and subject to
the same confidentiality penalties as the person disclosing
32 or providing that information. The information obtained must
be maintained in a manner that ensures the maximum
34 protection of privacy and confidentiality rights.

36 **3. Not construed to allow certain disclosures.** This
section may not be construed to allow disclosure of any reports
38 or records relevant to the reports of financial abuse of an elder
or a dependent adult if the disclosure would be prohibited by any
40 other provisions of state or federal law applicable to the
reports or records relevant to the reports of the financial
42 abuse, nor may it be construed to prohibit the disclosure by a
financial institution of any reports or records relevant to the
44 reports of financial abuse of an elder or a dependent adult if
the disclosure would be required of a financial institution by
46 otherwise applicable state or federal law or court order.

48 **§174. Mandated reporter of suspected financial abuse of**
elder or dependent adult not liable

1. **No liability.** A mandated reporter or an employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of financial abuse of an elder or dependent adult is not civilly or criminally liable for any report required or authorized by this chapter. Any other person reporting a known or suspected instance of financial abuse of an elder or dependent adult may not incur civil or criminal liability as a result of any report authorized by this chapter unless it can be proven that a false report was made and the person knew that the report was false. A person required to make a report pursuant to this chapter, or any person taking photographs at that person's discretion, is not civilly or criminally liable for taking photographs of an elder or a dependent adult who is suspected to be the victim of financial abuse or for causing photographs to be taken of such a victim or for disseminating the photographs with the reports required by this chapter. This section may not be construed to grant immunity from this liability with respect to any other use of the photographs.

2. **No liability for access.** A mandated reporter or an employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected financial abuse of an elder or a dependent adult, provides the requesting agency with access to the elder or dependent adult who is known or suspected to be the victim of that abuse is not civilly or criminally liable as a result of providing that access.

§175. Adult protective services agency to report to law enforcement agency

An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the appropriate law enforcement agency any known or suspected instance of criminal activity and to any public agency responsible for the investigation of cases of elder and dependent adult financial abuse. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of criminal activity.

§176. Department of Health and Human Services to provide information

The Department of Health and Human Services shall provide mandated reporters with instructional materials regarding financial abuse of an elder or a dependent adult and their

obligation to report under this chapter. At a minimum, the instructional materials must include the following:

1. Explanation. An explanation of financial abuse of an elder or a dependent adult;

2. Information on how to recognize. Information on how to recognize potential financial abuse of an elder or a dependent adult;

3. Information on investigations. Information on how the Department of Health and Human Services investigates reports of known or suspected financial abuse; and

4. Instructions on how to report. Instructions on how to report known or suspected incidents of financial abuse, including the appropriate telephone numbers to call and what types of information would assist the Department of Health and Human Services with its investigation of the report.

SUMMARY

This bill requires officers and employees of financial institutions to report suspected financial abuse of an elder or a dependent adult.