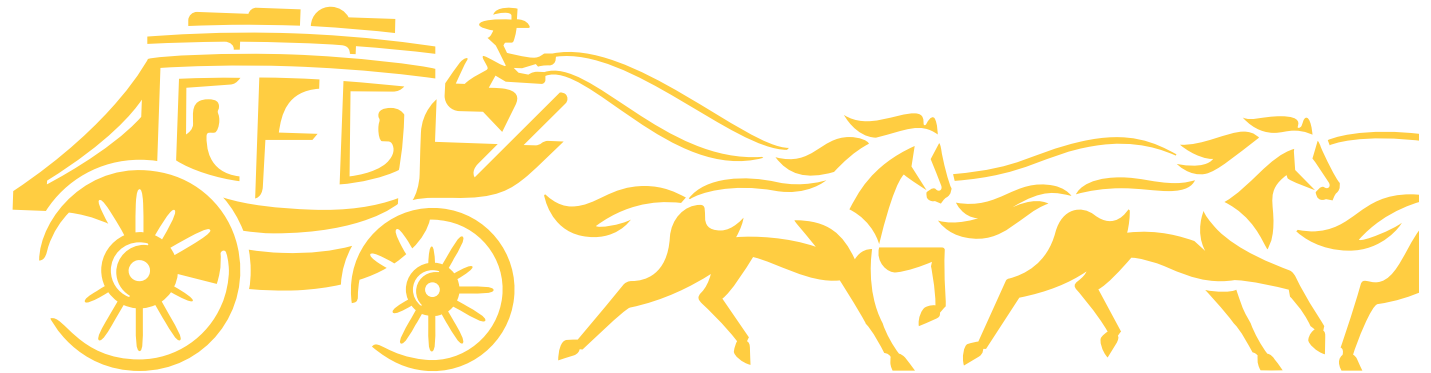




Protecting Aging Americans: Searching for Tools to Fight Elder Financial Exploitation

April 7, 2021

Aging Client Services
Anne Wilson Larkin
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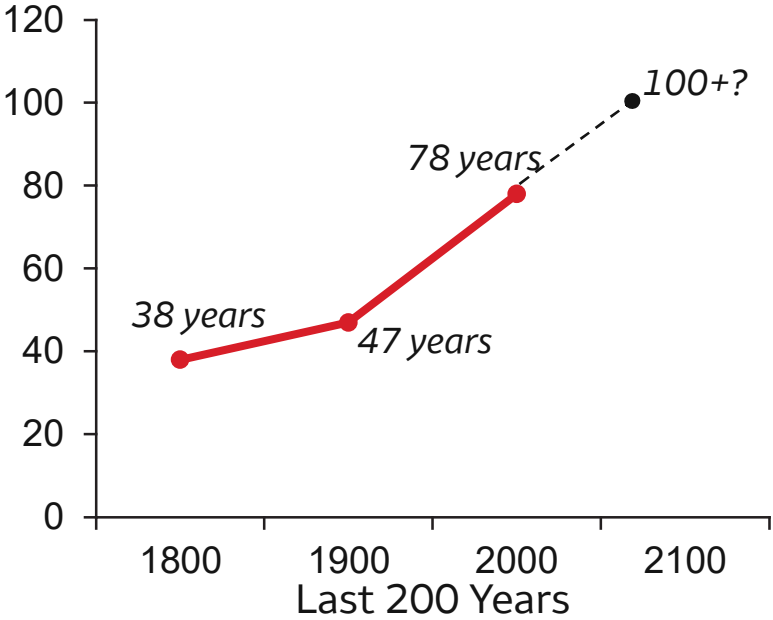


Why Talk about this Topic?

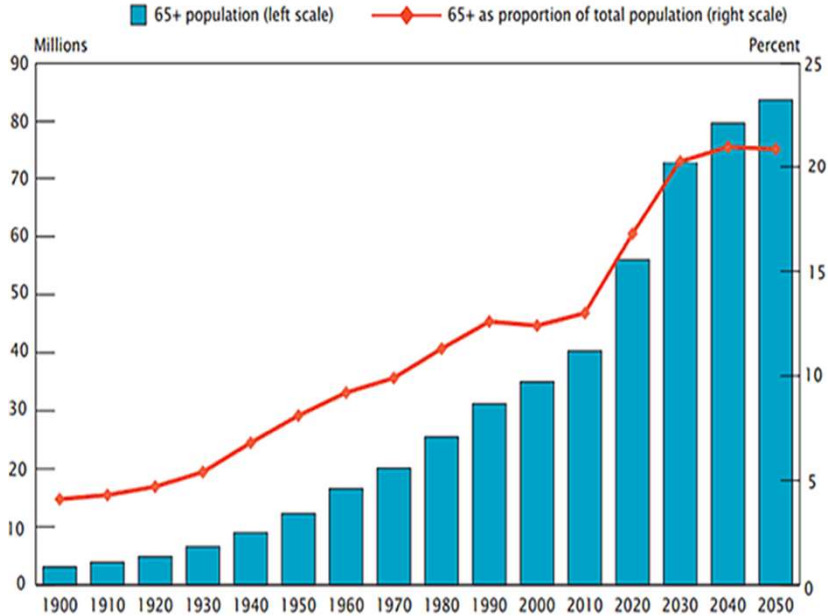
<https://www.ksl.com/article/46695914/utah-lawmaker-seeks-to-combat-scammers-after-family-loses-150k-in-scheme>

Increasing Longevity and Elder Population

Average lifespan doubled over the last two centuries



Number of Americans 65 and over (1900 to 2050)

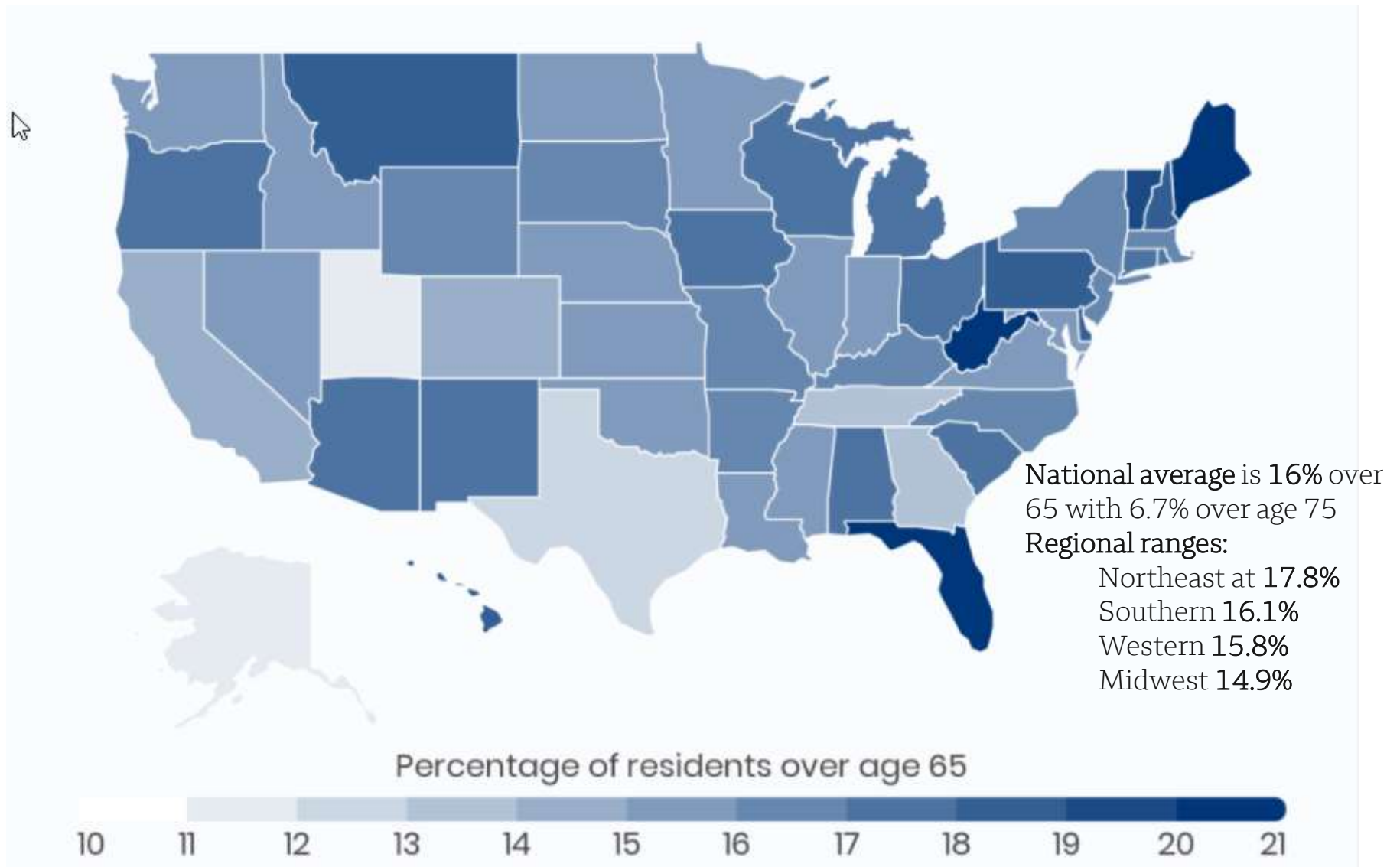


Source: U.S. Census Bureau, 2010

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Sources : 1900 to 1940, and 1960 to 1980, U.S. Bureau of the Census, 1983; 1950, U.S. Bureau of the Census, 1953; 1990, U.S. Bureau of the Census, 1992; 2000, U.S. Census Bureau, 2001; 2010, U.S. Census Bureau, 2011; 2020 to 2050, U.S. Census Bureau, 2012a; 1900 to 2010, decennial census; 2020 to 2050, 2012 National Population Projections, Middle series.

States with the Oldest Populations



Source: U.S. Census Bureau 2020

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Which Means for Americans

1 in 5 Americans will be 65 or older by 2030

- In 2034, people over 65 will outnumber those under age 18.
- Projected population in 2060 of people age 65 and older is 98.2 million – with 19.7 million being age 85+
- Half of women over 75 live alone (8.1 million)
- Pandemic brought increases in multi-generational housing and grandparents providing care for their grandchildren

Retirement at 65 requires financial assets to last 25-30+ years

- One-half of Boomers are now retired yet 48% of Americans ages 60 to 80 have less than \$50,000 in savings
- Americans 65 and older were 1/4th of unemployed due to the pandemic, the 2nd largest group behind 16-24 year olds
- Millennials may report fraud more often but elders lose more. 80-year olds are most often impacted, followed by 70, 90 and then 60-year olds
- Both health and financial impacts of COVID were disproportionately larger on elder minorities

Sources: U.S. Census Bureau; <https://itcombudsman.org/uploads/files/issues/mmi-elder-financial-abuse.pdf>; [Here's how much Americans have saved for retirement at different ages \(cnbc.com\)](#) WF ECI data of reports filed with APS or other agencies

Yet Losses from Elder Financial Exploitation are Increasing

Multi-billion dollar industry

- The victim knows the of the perpetrator the majority of time
- On-line dating/romance scams is largest dollar loss: \$304 million (\$1 of \$4 lost)
- Gift card scams is largest number of occurrences

DOJ sent some 2000 Money Mule warning letters to seniors in Fall of 2020

- International criminal rings sprang into action with the pandemic
- Same scams but with a COVID wrapper

Adults 65 and older lost more dollars to fraudsters than any other age group

- 1 out of every 5 adults over age 65 have been victimized, with women nearly twice as likely to be victims
- Often take over accounts and use fear, immediate needs or scarcity

Society loses even more

- \$352 million lost by New Yorkers became \$1.5 billion in social impact

Sources: Leiber, N. (2018, May 3). How criminals steal \$37 billion a year from America's elderly. Bloomberg. <https://www.bloomberg.com/news/features/2018-05-03/america-s-elderly-are-losing-37-billion-a-year-tofraud>; NAPSA; National Center on Elder Abuse, "What We Do" (available at <https://ncea.acl.gov/whatwedo/research/statistics.html#perpetrators>); FTC; DOJ: [U.S. Law Enforcement Takes Action Against Approximately 2,300 Money Mules In Global Crackdown On Money Laundering | OPA | Department of Justice](#); AARP; NY State Elder Abuse Prevalence Study Final Report," published by NY State Office of Children and Family Services, retrieved from www.lifespan-roch.org/documents/UndertheRadar051211.pdf;

Seniors and Vulnerable Adults are Perfect Targets

- They have money/assets
- They are trusting of others
- They have time on their hands
- They live alone and often away from family members
- They tend to be technologically challenged
- They may have limited mobility
- They may be mentally and/or physically vulnerable
- They may be over age 18 with physical, mental or emotional impairment or over age 60 depending on definitions
- They comprise 100% of long term care residents, with an estimate of almost 1/3 being age 50 or younger

Complications with Diminished Capacity

- Forgetfulness, especially short-term
- Confusion or disorientation
- Difficulty performing simple tasks
- Poor judgment, poor comprehension
- Difficulty with abstract concepts
- Depression, anger, and drastic mood swings
- Change in appearance or decline in hygiene



But May Be Temporary

- Medicine Reaction
- Health Issue
- Poor Nutrition
- Infection
- Depression
- Lack of Sleep

Current State Tools

Financial Actions That Saved Money when Suspected Elder Financial Abuse

Refused Transaction 84%	Hold/Delayed Transaction 75%
Added Notes to Account 61%	Withdrawal Limits on Account 60%
Asked Questions 58%	Contacted Authorized Party 58%
Flagged Account 57%	Explained Concerns to Client 54%
Escalated to Management 51%	Reimbursed Lost Funds 50%
Refused Power of Attorney 50%	Separated Perpetrator & Client 45%
New ATM/Debit/Credit Card 44%	Contacted Law Enforcement 42%
Contacted APS 34%	Other Action 89%

- Average victim was 70-79 year old female with less than \$20,000 in account.
- Saved money more often when perpetrator was a family member

Source: AARP BankSafe partnership with Virginia Tech Center for Gerontology: The Impact of Training Financial Professionals to Prevent Financial Exploitation Summary; Jilene Gunther and Pamela Teaster; full report: at aarp.org/banksafe (October 2019)

Different but United We Stand



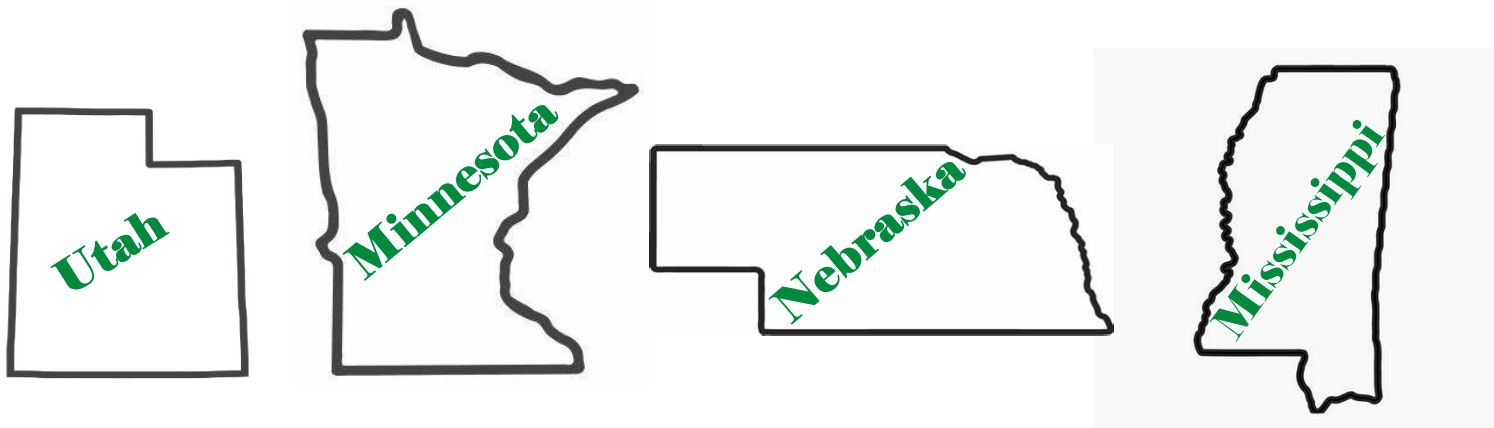
Uniform Power of Attorney Act (2006)

- Fiduciary contract between principal and agent
 - Important financial tool for travel or age, illness, incapacity
 - Laws in all states are unique yet suggested model provisions existed for 15 years
- **Two specific uniform tools needed**
 - Section 116 - ability to seek court review for list of persons with sufficient interest, including **anyone asked to rely on POA**
 - Section 120 - limited ability to reject a POA if **agent is suspected of causing financial abuse**
 - Variety of states but majority now have one or both of these provisions
 - **PLEASE CHECK YOUR STATE PROVISIONS FOR BOTH OF THESE TOOLS** - 13 states still need **both** sections as of 2020

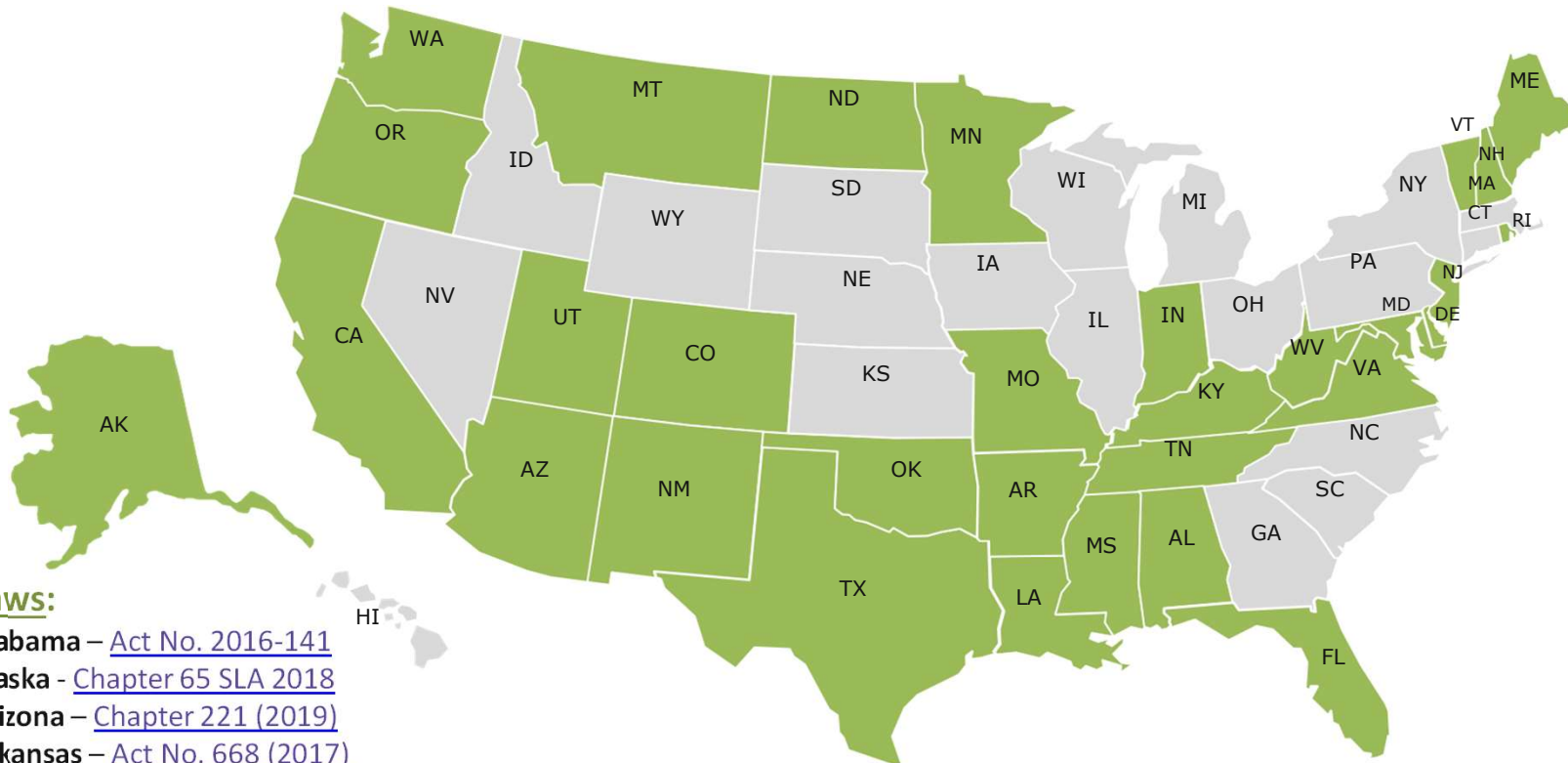
Another Important Tool – Report and Hold

If **report** suspected financial abuse to state agencies (often Adult Protective Services-APS), states grant financial institutions a **safe harbor** if in good faith **temporarily hold/delay** of a transaction and/or disbursement

- **First** state to allow a **financial institution** to pause a transaction when financial abuse was suspected - **Washington** (2010)
- Slowly growing trend with **DE, LA, ND, TN, TX** and **VA** leading the movement over last 10 years
- **PLUS four more** passed it in 2020 – making **20%** now have this tool
- Number of states with pending legislation



Report & Hold Laws for Broker/Dealers in Over 60% of States



Laws:

Alabama – [Act No. 2016-141](#)

Alaska - [Chapter 65 SLA 2018](#)

Arizona – [Chapter 221 \(2019\)](#)

Arkansas – [Act No. 668 \(2017\)](#)

California - [Chapter 272 \(2019\)](#)

Colorado – [Chapter 289, SL of 2017](#)

Delaware – [Title 31, Ch. 39 & Title 6, Ch. 37 Del Code \(2015/2018\)](#)

Florida – [Chapter 2020-120](#)

Indiana – [Act. No. 221 \(2016\)](#)

Kentucky – [Acts 2018, Ch. 12714](#)

Louisiana – [Act No. 580 \(2016\)](#)

Maine – [Chapter 17 \(2019\)](#)

Maryland – [Ch. 838, 2017](#)

Minnesota – [Ch. 161, Laws of 2018](#)

Mississippi – [Sec. 75-71-413 MS Code 1972 \(2017\)](#)

Missouri – [RSMo 409.600-409.630 \(2015\), Ch. 409.630 \(2020\)](#)

Montana – [Chapter 84 \(2017\)](#)

New Hampshire – [Chapter 208 of 2019](#)

New Jersey – [P.L. 2019, c.340.](#)

New Mexico – [Chapter 106 of 2017](#)

North Dakota – [Ch. 10-04-08.5, Code of ND \(2017\)](#)

Oregon – [Chapter 514, 2017 Laws](#)

Rhode Island – [S. 433-A \(2019\)](#)

Tennessee – [Pub. Ch. 424 \(2017\)](#)

Texas – [Art. 581-45 Vernon's TX Civil Statutes \(2017\)](#)

Utah – [Sec. 61-1-201 – 206 U.C.A. \(2018\)](#)

Virginia – [Sec. 63.2-1606\(L\) \(2019\)](#)

Washington State – [Ch. 133, Laws of 2010](#)

West Virginia – [Chapter 321, 2020](#)

Rules:

Oklahoma – [660: 11-15-2](#)

Vermont – [S-2016-01](#)

Needing More Help

Add Your State to the Fight and the Map

1. Extend “Report and hold” abilities to **all** financial institutions
 - a) Uniform definitions for ease of compliance and standards to accept cases (for reporting, transactions not just disbursements; extend timeframe; permit use of reasonably associated contacts and provide for notice of case status/closings)
 - b) Permit investigatory sharing and protecting of financial information
 - c) Avoid chilling effects of reporting by protecting name of reporter
 - d) Update older statutes
2. Expand Uniform Power of Attorney laws as needed
3. Fund APS so protect residents better, partner better, and participate more re: temporary guardianships and Financial Protection Orders
4. Support a national filing and data system/portal
 - a) All financial institutions and state agencies can file and get reports faster (one web form that automatically routes to appropriate state and national agencies)
 - b) Creates a reliable source for data and analysis

More Ways to Put Your State on the Map

- Prosecute the fraudsters and not punish victims
- Disinherit abusers so do not profit from bad acts
- Talk about it - increase awareness and educate residents plus encourage partnering of public, private and non-profit groups (multi-disciplinary teams-MDTs) to
 - Increase Public Service Announcements
 - Better trained and coordinated efforts with police, APS, prosecutors, regulators, financial industry & investors
 - Use free resources of FTC, DOJ, American Bankers, AARP, FINRA and others
 - Fund awareness and other programs to keep abusers from profiting
 - Advocate for additional federal assistance where needed

Results are Healthy Economies

- More residents with lifelong financial resources through aging longevity
- Greed has no economic, geographic or age boundaries **and**
 - Trends of increasing incidents and sophistication of fraud and undue influence
 - Crossing state lines to reach vulnerable systems or victims
 - Re-victimization is common
 - Exiting a relationship passes the issue to next bank
- All age groups are increasing digital transactions (computer or mobile app) **BUT**
 - Ease of access and speed to move money means fewer delay opportunities
 - Longer lifespan and rising care costs increases hardship of lost funds
 - Increased risk of cognitive decline with age
 - Increased dependency and state costs when no remaining assets
- COVID showed older Americans were more susceptible and more resilient **BUT**
 - Root is a family dynamic; need for support, education and planning
 - Avoid situations of one person unfairly absconding with assets

Pledge to Keep Working Together

*Coming together is a beginning;
Keeping together is progress;
Working together is success.*

– Henry Ford

*We don't accomplish anything in this world alone...
whatever happens is the result of the whole tapestry of one's life and
all the weavings of individual threads from
one to another that creates something.*

– Supreme Court Justice
Sandra Day O'Connor

Appendix

- Resources and Uniform Law Sections
- Uniform POA Sections 116 and 120
- Historical Legislative Help

Resources

- Wells Fargo materials
 - [Protecting Those You Love - a Guide to Identify and Avoid Financial Abuse \(wellsfargomedia.com\)](https://wellsfargomedia.com)
 - [2018 Wells Fargo Elder Needs Survey - Retirement Survey White Paper \(wellsfargo.com\)](https://wellsfargo.com/2018-elder-needs-survey)
 - [Trusted Contact | Wells Fargo Advisors](https://wellsfargo.com/trusted-contact)
 - [Recognizing and Staying Vigilant about Elder Financial Fraud and Abuse - Wells Fargo Stories \(wf.com\)](https://wellsfargo.com/stories/recognizing-and-staying-vigilant-about-elder-financial-fraud-and-abuse)
- National Adult Protective Services Association
 - Survey of APS challenges: <https://www.napsa-now.org/policy-advocacy/national-policy/>
 - Document Request Form: <https://www.napsa-now.org/wp-content/uploads/2019/10/Guidelines-Bank-Protocol-and-Form-FINAL.1-September-2019-1.pdf>
- American Bankers Association materials such as Safe Banking for Seniors (www.aba.com/advocacy/community-programs/safe-banking-for-seniors/) and various infographics such as <https://www.aba.com/-/media/images/infographics/cybersecurity.jpg>
- SIFMA investor resources and advocacy, including Senior Investor Protection Toolkit (https://www.sifma.org/resources/archive/general/?aq=Senior%20Investor&hPP=10&idx=prod_wp_searchable_posts&ap=0&fR%5Bpost_type%5D%5B0%5D=General%20Resources&is_v=1)
- Government Resources:
 - DOJ Office of Victims of Crime Elder Fraud hotline: **833-FRAUD-11 (833-372-8311)**
 - FTC: [Scam Watch | Federal Trade Commission \(ftc.gov\)](https://www.ftc.gov/scam-watch); free printed materials: [Free Publications to Share | Bulkorder \(ftc.gov\)](https://www.ftc.gov/free-publications-to-share)
 - CFPB building Elder Fraud Prevention Networks: https://www.consumerfinance.gov/practitioner-resources/resources-for-older-adults/elder-protection-networks/?utm_campaign=NEWSBYTES-20200611&utm_medium=email&utm_source=Eloqua
- Additional Elder Groups and Resources
 - AARP: articles such as https://www.consumerfinance.gov/practitioner-resources/resources-for-older-adults/elder-protection-networks/?utm_campaign=NEWSBYTES-20200611&utm_medium=email&utm_source=Eloqua and BankSafe training
 - American Alzheimer's Association
 - American Society on Aging (ASA)
 - Administration on Aging (AOA)
 - Eldercare Locator for elder services using zip code on-line or call 800-677-1116
 - National Center for Abuse in Later Life (NCALL) for trainings
 - National Center of Elder Abuse (NCEA) for diverse populations materials
 - National Crime Victim Center (NCVC)
 - YouTube videos re: scamming the scammers by Jim Browning, Kitboga and others
 - 2020 Netflix movie "I Care A Lot" regarding guardian and fiduciary abuse

UNIFORM POWER OF ATTORNEY ACT

SECTION 116. Judicial Relief.

(a) The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

- (1) the principal or the agent;
- (2) a guardian, conservator, or other fiduciary acting for the principal;
- (3) a person authorized to make health-care decisions for the principal;
- (4) the principal's spouse, parent, or descendant;
- (5) an individual who would qualify as a presumptive heir of the principal;
- (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
- (7) a governmental agency having regulatory authority to protect the welfare of the principal;
- (8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
- (9) **a person asked to accept the power of attorney.**

(b) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

UNIFORM POWER OF ATTORNEY ACT

SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY.

Alternative A

(a) Except as otherwise provided in subsection (b):

(1) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under Section 119(d) no later than seven business days after presentation of the power of attorney for acceptance;

(2) if a person requests a certification, a translation, or an opinion of counsel under Section 119(d), the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(3) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(b) A person is not required to accept an acknowledged power of attorney if:

(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(3) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(4) a request for a certification, a translation, or an opinion of counsel under Section 119(d) is refused;

(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Section 119(d) has been requested or provided; or

(6) the person makes, or has actual knowledge that another person has made, a report to the [local adult protective services office] stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(1) a court order mandating acceptance of the power of attorney; and

(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Legislative Note: *Section 120 enumerates the bases for legitimate refusals of a power of attorney as well as sanctions for refusals that violate the Act. Alternatives A and B are identical except that Alternative A applies to all acknowledged powers of attorney and Alternative B applies only to acknowledged statutory form powers of attorney.*

Historical Legislative Help

Early Challenges to Elder Financial Abuse Assistance

- Financial Institutions often caught in middle
 - Society values self-autonomy
 - Owe duty to **protect** assets; maintain customer's **privacy**; and promptly **execute** customer's instructions/order
 - Employees are not doctors and ill-equipped to address issues
- Instances when okay to say “no”
 - Delay sending money to a known or suspected scam
 - **Add cites** to Patriot Act and Gramm Leach Bliley
 - Contract provisions – New Account, Deposit and Trust Agreements
- Instances where can contact someone - a trusted family member, friend or loved one
 - Trusted Contact Authorization form (unique to each customer so joint accounts have multiple forms)
 - “Reasonably Associated With” account or customer (attorney, CPA, beneficiaries, relatives, etc.)

Early Challenges to Elder Financial Abuse Legislation

- Other concerns
 - “It is the customer’s money” and “They can do what they want”
 - Privacy laws prohibit contacting others about customer’s account
 - Lack of skills to determine financial abuse until after the fact
- Some regulators balked at being involved
 - “We are not Social Workers” and “We do not have staff or budget”
 - Require diminished capacity or other triggers before involved
 - Limited or divided jurisdiction – up to 4 different places to report (APS, Securities Administrator, Law Enforcement, Ombudsman) and decentralized intake by counties
 - Refuse permission to hold up a transaction while investigate
 - Documents provided become public records

Securities “Report and Hold” Model Act (January 2016)

North American Securities Administrators Association (NASAA) support for “Report and Hold” legislation for securities firms and investment advisors

- **If** report to APS and Securities Regulators
- **Then** can **hold** disbursements for up to 15 days (can be extended 10 more days) and **protected** by administrative and civil **immunity**
- Authorizes contact of someone **previously designated by the client**

5 years of variations and improvements:

- **Transactions** vs. disbursements
- Document **requests** vs. subpoena
- Documents produced **not** subject to public review
- Authorize contact “**reasonably associated persons**” even if not previously designated



Federal Regulator Adopts Similar Rule Changes (February 2018)

Financial Regulatory Authority (FINRA)

- New Rule 2165 (Financial Exploitation of Specified Adults)
 - Provides safe harbor of regulatory **immunity** for not releasing funds if reasonable belief of exploitation
 - **Temporary hold** on disbursement for 15 business days that can be extend 10 more days by firm and further by state regulator or court
 - Firms must notify trusted contact **and** those authorized on account
 - In process of amending rule to cover **transactions** and **extend timeframe** for holds.
- Amended Rule 4512 (Customer Account Information) to require firms to ask for a “trusted contact” for client accounts



Federal Senior Safe Act (May, 2018)

Covers credit unions, depository institutions, Investment advisors, broker-dealers, insurance companies and agencies, and transfer agents and employees

- Immunity **when reporting** potential financial exploitation of a senior
- **If** trained in how to identify and report exploitative activity

Forfeiture of Inheritance

Disincentive to commit elder abuse plus **incentive** for others to report

Arizona § 46-456	California Probate Code §259
Connecticut (proposed)	Illinois 755 ILL. 5/2-6.2
Kentucky § 381.280	Maryland CRIM. LAW § 8-801
Michigan § 700.2803	Oregon § 112.465
Washington § 11.84.020	West Virginia §36-1-20

- Often physical and mental abuse by family members escapes reporting laws unlike abuse in facilities
- Six states require conviction, meaning elevated burden of proof and potential appeal process before estate can settle
- Three states trigger disinheritance only if financial abuse – not other forms of elder abuse

**WELLS
FARGO**

Thank you.

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