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HOUSE OF REPRESENTATIVES
REPORT
114–659

SENIOR$AFE ACT OF 2016

JULY 5, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 4538]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4538) to provide immunity from suit for certain individuals who disclose potential examples of financial exploitation of senior citizens, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior$afe Act of 2016".

SEC. 2. IMMUNITY.

(a) DEFINITIONS.—In this Act—

(1) the term "Bank Secrecy Act Officer" means an individual responsible for ensuring compliance with the requirements mandated by subchapter II of chapter 53 of title 31, United States Code;

(2) the term "broker-dealer" means a broker or dealer, as those terms are defined, respectively, in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(3) the term "covered agency" means—

(A) a State financial regulatory agency, including a State securities or law enforcement authority;

(B) each of the Federal financial institutions regulatory agencies;

(C) the Securities and Exchange Commission;

(D) a law enforcement agency; and

(E) and State or local agency responsible for administering adult protective service laws;

(4) the term "covered financial institution" means—

(A) a credit union;

(B) a depository institution;

(C) an investment advisor;

(D) a broker-dealer; and

(E) an insurance company;

(5) the term "credit union" has the meaning given that term in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301);

(6) the term "depository institution" has the meaning given the term in section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a));

(7) the term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that—

(A) uses the resources of a senior citizen for monetary personal benefit, profit, or gain; or

(B) results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings or assets;

(8) the term "Federal financial institutions regulatory agencies" has the meaning given the term in section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302);

(9) the term "investment adviser" has the meaning given the term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(10) the term "insurance company" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a));

(11) the term "registered representative" means an individual who represents a broker-dealer in effecting or attempting to affect a purchase or sale of securities;

(12) the term "senior citizen" means an individual who is not less than 65 years of age; and

(13) the term "State securities or law enforcement authority" has the meaning given the term in section 24(f)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(f)(4)).

(b) IMMUNITY FROM SUIT.—

(1) IMMUNITY FOR INDIVIDUALS.—An individual who has received the training described in section 3 shall not be liable, including in any civil or administrative proceeding, for disclosing the possible exploitation of a senior citizen to a covered agency if the individual, at the time of the disclosure—

(A) served as a supervisor, compliance officer (including a Bank Secrecy Act Officer), or registered representative for a covered financial institution; and

(B) made the disclosure with reasonable care including reasonable efforts to avoid disclosure other than to a covered agency.

(2) IMMUNITY FOR COVERED FINANCIAL INSTITUTIONS.—A covered financial institution shall not be liable, including in any civil or administrative proceeding, for a disclosure made by an individual described in paragraph (1) if—

(A) the individual was employed by, or, in the case of a registered representative, affiliated or associated with, the covered financial institution at the time of the disclosure; and

(B) before the time of the disclosure, the covered financial institution provided the training described in section 3 to each individual described in section 3(a).

SEC. 3. TRAINING REQUIRED.

(a) IN GENERAL.—A covered financial institution may provide training described in subsection (b)(1) to each officer or employee of, or registered representative affiliated or associated with, the covered financial institution who—

(1) is described in section 2(b)(1)(A);

(2) may come into contact with a senior citizen as a regular part of the duties of the officer, employee, or registered representative; or

(3) may review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

(b) TRAINING.—

(1) IN GENERAL.—The training described in this paragraph shall—

(A) instruct any individual attending the training on how to identify and report the suspected exploitation of a senior citizen;

(B) discuss the need to protect the privacy and respect the integrity of each individual customer of a covered financial institution; and

(C) be appropriate to the job responsibilities of the individual attending the training.

(2) TIMING.—The training required under subsection (a) shall be provided as soon as reasonably practicable but not later than 1 year after the date on which

an officer, employee, or registered representative begins employment with or becomes affiliated or associated with the covered financial institution.

(3) BANK SECRECY ACT OFFICER.—An individual who is designated as a compliance officer under an anti-money laundering program established pursuant to section 5318(h) of title 31, United States Code, shall be deemed to have received the training described under this subsection.

SEC. 4. RELATIONSHIP TO STATE LAW.

Nothing in this Act shall be construed to preempt or limit any provision of State law, except only to the extent that section 2 provides a greater level of protection against liability to an individual described in section 2(b)(1) or to a covered financial institution described in section 2(b)(2) than is provided under State law.

PURPOSE AND SUMMARY

Representatives Kyrsten Sinema, Bruce Poliquin, Patrick Murphy and Mick Mulvaney introduced H.R. 4538, the Senior$afe Act of 2016, on February 11, 2016. The Senior$afe Act provides that certain financial institutions will receive immunity from civil or administrative proceedings if the financial institution provides training to supervisory, compliance or legal employees to identify and report the suspected exploitation of a senior citizen to specified law enforcement or regulatory authorities.

BACKGROUND AND NEED FOR LEGISLATION

According to a study conducted by MetLife, seniors lose at least $2.9 billion annually in reported cases of financial exploitation. It has been estimated that one in five seniors, age 65 and older, have been the victim of financial fraud. However, despite the prevalence of senior financial fraud, the National Adult Protective Services Association estimated that only one in 44 cases of financial abuse is ever reported.

H.R. 4358 enables financial institutions and their employees to communicate with the appropriate regulatory and law enforcement agencies when there is a suspicion of financial exploitation of their clients. The Senior$afe Act also encourages, but does not require, financial institutions to offer employees training regarding the reporting of fraud against seniors; institutions offering such training may seek to avail themselves of the safe harbor from liability provided by the Act.

Seniors can be susceptible to financial fraud because current bank privacy laws make it difficult for these entities to report any potentially fraudulent activity. H.R. 4538 would protect banks, credit unions, investment advisers, broker-dealers, and insurance companies—and their employees—from civil or administrative liability, as long as employees receive training in how to spot and report predatory activity and reports are made "in good faith" and "with reasonable care."

H.R. 4538 is based on the state of Maine's Senior$afe program, an initiative launched in 2014 that was designed to train financial professionals to detect and report senior financial abuse. Senators Susan Collins and Claire McCaskill introduced similar legislation in October of 2015, S. 2216, "Senior$afe Act of 2015."

HEARINGS

The Committee on Financial Services' held no hearings examining matters relating to H.R. 4538.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 15 and June 16, 2016. An amendment in the nature of a substitute offered by Ms. Sinema was agreed to by voice vote. The Committee ordered H.R. 4538 to be reported favorably to the House as amended by a recorded vote of 59 yeas to 0 nays (recorded vote no. FC–108), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House as amended. That motion was agreed to by a recorded vote of 59 yeas to 0 nays (Record vote no. FC–108), a quorum being present.

Record vote no. FC-108

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)	X		
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez	X		
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano	X		
Mr. McHenry	X			Mr. Hinojosa	X		
Mr. Pearce	X			Mr. Clay	X		
Mr. Posey	X			Mr. Lynch	X		
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)	X		
Mr. Luetkemeyer	X			Mr. Cleaver	X		
Mr. Huizenga (MI)	X			Ms. Moore	X		
Mr. Duffy	X			Mr. Ellison	X		
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher				Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee	X		
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4538 will reduce financial fraud against seniors by providing that certain employees of a covered financial institution that receive training, and financial institutions that provide training regarding the identification and reporting of the suspected exploitation of a senior citizen, would not be liable for disclosing such exploitation to a covered agency, provided that the individual made the disclosure in good faith and with reasonable care.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 1, 2016.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4538, the Senior$afe Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4538—Senior$afe Act of 2016

H.R. 4538 would exempt financial institutions and some of their employees from liability in any civil or administrative proceeding when those employees report to a government agency about the potential exploitation of a senior citizen. Based on information from the federal banking regulators, CBO concludes that the bill would not change their policies towards such reporting. Accordingly, CBO estimates that enacting the bill would have no effect on the federal budget.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4538 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4538 would impose an intergovernmental mandate as defined in the Unfunded Mandate Reform Act (UMRA) by preempting state laws that provide a lower level of liability protection for certain financial institutions and their employees than would be provided under the bill. The bill would exempt from liability financial institutions and employees of those institutions that have received training on the financial exploitation of senior citizens and have filed reports of such exploitation to an appropriate government authority. Although the preemption would limit the application of state laws and regulations, CBO estimates that the bill would impose no duty on state, local, or tribal governments that would result in additional spending or a loss of revenues.

H.R. 4538 also would impose a private-sector mandate by removing a private right of action. The bill would eliminate the right of plaintiffs to file a civil action against certain financial institutions and their employees. The cost of the mandate would be the forgone net value of awards and settlements that would have been awarded for such claims in the absence of the bill. A search of the available literature suggests that few of those specific types of lawsuits have been brought under current law.

Although there is uncertainty about the number of claims against financial institutions and their employees that would be successful and about the value of awards or settlements in those cases, because of the narrow scope of the cases involved, CBO expects that the cost of the mandate in any one year would fall below the annual threshold for private-sector mandates established in UMRA ($154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs), Rachel Austin (for intergovernmental mandates) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4538 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 4538 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 4538 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

This section cites H.R. 4538 as the "Senior$afe act of 2016."

Section 2: Immunity

This section sets forth definitions including that of a covered financial institution, which means: (a) a bank; (b) a credit union; (c) an investment adviser; (d) a broker-dealer; and (e) an insurance company.

This section sets forth that individuals who receive training are not liable for any civil or administrative proceeding if they disclose the exploitation of a senior citizen to a covered agency with reasonable care. In addition, covered financial institutions that provide training to employees are not liable for any civil or administrative proceeding arising from the individual's disclosure.

Section 3: Training required

This section outlines the training that is required for employees or financial institutions that interact with senior citizens. The training shall instruct individuals how to identify suspected exploitation of a senior citizen, shall instruct individuals how to respect the privacy of customers, and shall be appropriate to the individual in the training. The training shall be provided no later than 1 year after employment.

Section 4: Relationship to State law

This section states that this bill shall not preempt State law except to the extent that the Senior$afe Act provides a greater level of liability protection than is currently provided for in state law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4538 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.

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