

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 556

INTRODUCER: Banking and Insurance and Senator Rouson

SUBJECT: Protection of Specified Adults

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hall</u>	<u>Tuszynski</u>	<u>CF</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 556 provides additional protections for specified adults (age 65 years or older) and vulnerable adults who have accounts with financial institutions and may be victims of suspected financial exploitation. A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. The bill allows financial institutions to delay disbursements or transactions of funds from an account of a specified adult or a vulnerable adult under the following conditions:

- A financial institution reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.
- Not later than 3 business days after the date on which the delay was first placed, the financial institution provides written notice to all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided on the account, unless the employee of the financial institution believes that any of the parties are involved in the suspected exploitation.
- Not later than 3 business days after the date on which the delay was first placed, a state-chartered financial institution notifies the Office of Financial Regulation of the delay.
- The financial institution immediately initiates an internal review of the facts and circumstances that caused the employee to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

A delay in a disbursement or transaction expires in 15 business days, and may be extended for an additional 30 business days. A court of competent jurisdiction may shorten or extend the length of any delay.

The bill grants immunity from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction to any financial institution who in good faith and exercising reasonable care complies with the provisions of s. 415.10341, F.S. The bill does not alter the obligation of a financial institution to comply with instructions from a client absent a reasonable belief of financial exploitation. The bill does not create new rights or obligations of a financial institution under other applicable laws or rules. The bill does not limit the right of a financial institution to refuse to place a delay on a transaction or disbursement under other laws or rules or under a customer agreement.

The bill takes effect July 1, 2024.

II. Present Situation:

Demographics of Florida's Older Adults

In 2021, an estimated 21 percent (4,498,198 out of 21,477,737) of Florida's population was age 65 or older.¹ Florida's population of individuals age 65 or older, as of April 1, 2022, was 4,782,219.²

Financial Exploitation of Older Adults

Older adults are targets for financial exploitation due to their income and accumulated life-long savings, in addition to the possibility that they may face declining cognitive or physical abilities, isolation from family and friends, lack of familiarity or comfort with technology, and reliance on others for their physical well-being, financial management, and social interaction.³ According to the U.S. Department of Justice, elder abuse, which includes elderly financial exploitation among other forms of abuse, affects at least 10 percent of older adults each year in the United States.⁴

The monetary amount of losses is difficult to ascertain. A 2023 report estimated the cost of elder financial exploitation in the United State at \$269.5 billion in 2022.⁵ The amount of elder fraud losses in Florida is estimated to be \$15.43 billion.⁶ However, the amount of reported loss in Florida is about \$657 million. Many victims fail to report exploitation because of shame and

¹ [GAO-21-90, ELDER JUSTICE: HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation](#) KFF, [Population Distribution by Age | KFF](#) (2021) (last visited Jan. 24, 2024).

² University of Florida, Bureau of Economic and Business Research, Florida Population Projections, Bulletin 196, (Oct. 2023).

³ See Department of Justice, Office of Public Affairs, "Associate Attorney General Vanita Gupta Delivers Remarks at the Elder Justice Coordinating Council Meeting," (December 7, 2021); see also "Associate Deputy Attorney General Paul R. Perkins Delivers Remarks at the ABA/ABA Financial Crimes Enforcement Conference," (December 9, 2020).

⁴ [About Elder Abuse | EJI | Department of Justice](#) (last visited Sep. 28, 2023).

⁵ The United States of Elder Fraud – How Prevalent is Elder Financial Abuse in Each State? (June 15, 2023). [The United States of Elder Fraud - How Prevalent is Elder Financial Abuse in Each State? - Comparitech](#) (last visited Jan. 24, 2024).

⁶ *Id.*

embarrassment. The tendency to not report may also be related to the perpetrator being a friend or family member of the victim.⁷

Some of the most common forms of financial exploitation reported to state adult protective services include:

- Theft. Involves assets taken without knowledge, consent or authorization; may include taking of cash, valuables, medications other personal property.
- Fraud. Involves acts of dishonestly by persons entrusted to manage assets but appropriate assets for unintended uses; may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate. Involves unauthorized sales, transfers or changes to a property title; may include unauthorized or invalid changes to an estate documents.
- Contractor. Includes building contractors or handymen who receive a payment for building repairs, but fail to initiate or complete project; may include invalid liens by contractors
- Lottery Scams. Involves payments (or transfer of funds) to collect unclaimed property or “prizes” from lotteries or sweepstakes.⁸

The Internet Crime Complaint Center (IC3) within the Federal Bureau of Investigations, receives and tracks thousands of complaints daily, reported by victims of fraud, their family members, and law enforcement officers. The 2022 annual Elder Fraud Report⁹ provides a summary of complaints submitted by or on behalf of victims aged 60 and over. Some of the findings include:

- Over 88,000 victims over the age of 60 reported losses of \$3.1 billion to the IC3. This represents an 84 percent increase in losses over losses reported in 2021.
- The average loss per victim was \$35,101. There were 5,456 victims who lost more than \$100,000 each.
- Florida accounted for 8,480 out of the 88,000 total victims. Florida victims incurred over \$328 million in losses.

In 2013, the Financial Crimes Enforcement Network (FinCEN), which receives and maintains the database of suspicious activity reports (SARs),¹⁰ introduced electronic SAR filing with a designated category for “elder financial exploitation.”¹¹ Recent analysis of SARs related to elder financial exploitation has revealed the following:

⁷ AARP, *The Scope of Elder Financial Exploitation: What it Costs Victims* (2023), available at: <https://www.aarp.org/content/dam/aarp/money/scams-and-fraud/2023/true-cost-elder-financial-exploitation.doi.10.26419-2Fppi.00194.001.pdf> (last visited Jan. 24, 2024).

⁸ National Adult Protective Services Association, *What is Financial Exploitation?* available at: [Financial Exploitation – NAPSA \(napsa-now.org\)](https://www.napsa-now.org/) (last visited Jan. 24, 2024).

⁹ FBI IC3 Elder Fraud Report (2022), https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf (last visited Jan. 24, 2024).

¹⁰ A financial institution is required to file a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network (FinCEN) if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution involves funds derived from illegal activity, or attempts to disguise funds derived from illegal activity; is designed to evade regulations promulgated under the BSA; lacks a business or apparent lawful purpose; or involves the use of the financial institution to facilitate criminal activity, including elder financial exploitation. *See* 31 CFR ss. 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.

¹¹ Consumer Financial Protection Bureau, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, 3 (Feb. 2019), available at: https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf (last visited Jan. 24, 2024).

- Among the SARs that reported a loss to an older adult, the average amount lost was \$34,200; in 7 percent of these SARs, the loss exceeded \$100,000.¹²
- One-third of the individuals who lost money were ages 80 and older, and adults ages 70 to 79 had the highest average monetary loss (\$45,300).¹³
- Where an individual has incurred an actual loss, the amount of loss reflects substantial financial hardship for elders: The median suspicious activity amount from one sample of scam-related SARs was \$6,105, and for theft-related SARs it was \$15,964. These amounts represent 16 and 41 percent, respectively, of the median income of \$38,515 for households maintained by individuals 65 and over in 2015 (as reported by the U.S. Census Bureau).¹⁴
- The total number of SAR filings and total suspicious activity amounts increased 20 percent and 30 percent, respectively, each year during the period studied (October 2013 – August 2019).¹⁵

Elderly financial exploitation schemes generally involve either theft or scams.¹⁶ Suspicious activity report narratives indicate that financial exploitation most often involves money transfer scams conducted through money services businesses (MSBs) and theft perpetrated through depository, securities, and futures institutions.¹⁷

Financial Exploitation and the Role of Financial Institutions

Financial institutions can play a key role in detecting, responding to, and preventing elderly financial exploitation.¹⁸ Financial institutions are often well-positioned to detect when older account holders have been targeted or victimized. In recognition of this, FinCEN issued an Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (advisory).¹⁹ The advisory provided potential “red flag” indicators and instructions on how to report exploitation activity through Suspicious Activity Reports (SARs). Once such threats have been detected, financial institutions should report to law enforcement and the state or local Adult Protective Service agency. In 2013, eight federal regulatory agencies issued interagency guidance clarifying that reporting suspected financial abuse of older adults to appropriate authorities does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ FinCEN, *Financial Trend Analysis: Elders Face Increased Financial Threat from Domestic and Foreign Actors*, 7 (Dec. 2019), available at:

https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf (last visited Jan. 24, 2024).

¹⁵ *Id.* at 1.

¹⁶ See FinCEN Financial Trend Analysis (FTA), “Elders Face Increased Financial Threat from Domestic and Foreign Actors,” (December 2019), available at: [Financial Trend Analysis \(fincen.gov\)](https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf) (Dec. 2019) (last visited Jan. 24, 2024).

¹⁷ *Id.*

¹⁸ See, Consumer Financial Protection Bureau (CFPB), Advisory for financial institutions on preventing and responding to elder financial exploitation (March 2016), available at http://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf (last visited Jan. 24, 2024); and, CFPB, Recommendations and report for financial institutions on preventing and responding to elder financial exploitation (March 2016), available at [201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf \(consumerfinance.gov\)](https://www.consumerfinance.gov/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf) (last visited Jan. 24, 2024).

¹⁹ See, FinCEN, FIN-2011-A003, Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (Feb. 22, 2011), available at [INTELLIGENCE REPORT \(fincen.gov\)](https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf) (last visited Jan. 24, 2024).

Mandatory Reporting of Abuse or Exploitation of Vulnerable Adults in Florida

The Adult Protective Services Act (ch. 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member, which harms or is likely to harm a vulnerable adult's physical, mental, or emotional health.²⁰ The Adult Protective Services program is located within the Department of Children and Families (department), and is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act (act).²¹ Section 415.1034, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately. Any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.²²

For purposes of the act, the following terms apply:

- A “vulnerable adult” is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.²³
- “Exploitation” means a person who:²⁴
 - Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
 - Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- “Exploitation” may include, but is not limited to:²⁵
 - Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
 - Unauthorized taking of personal assets;
 - Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
 - Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

²⁰ Section 415.102, F.S.

²¹ Sections 415.101-415.113, F.S.

²² Section 415.1036, F.S.

²³ See s. 415.102(28), F.S.

²⁴ See s. 415.102(8), F.S.

²⁵ *Id.*

Once a person reports to the central abuse hotline,²⁶ the department must initiate a protective investigation within 24 hours.²⁷ If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact the appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.²⁸

Florida's Law on the Protection of Vulnerable Investors²⁹

In 2020, legislation was enacted in Florida to protect vulnerable investors.³⁰ The law allows a dealer or investment adviser to delay a disbursement or transaction of funds or securities from the account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A specified adult is an individual who is age 65 or older or who meets the definition of "vulnerable adult" under the act.

The suspected financial exploitation must be immediately reported to the Florida Abuse Hotline if so required by the act. Not later than three business days after placing a delay, the dealer or investment adviser must notify all parties authorized to transact business on the account as well as any designated trusted contact, unless such person is believed to be engaged in the suspected financial exploitation. Not later than three business days after placing or extending a delay, the dealer or investment adviser must notify the Office of Financial Regulation of the delay or extension.

A delay expires in 15 business days but may be terminated sooner. The dealer or investment adviser may extend the delay for up to an additional 10 business days. The length of the hold may be shortened or extended by a court of competent jurisdiction. A dealer or investment adviser must annually conduct training that is reasonably designed to educate its associated persons on issues pertaining to financial exploitation. A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction.

Regulation of Financial Institutions

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.³¹ The OFR has three divisions: the

²⁶ Section 415.103, F.S.

²⁷ Section 415.104, F.S.

²⁸ *Id.*

²⁹ Section 517.34, F.S.

³⁰ Ch. 2020-157, Laws of Fla.

³¹ Section 20.121(3)(a)2., F.S.

Division of Consumer Finance, the Division of Financial Institutions (DFI), and the Division of Securities.

Florida law defines the term “financial institution” broadly; the term includes “state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”³²

Dual Regulatory System

Banks and credit unions in the United States are chartered and regulated under a dual regulatory system. These depository institutions may elect to have a national charter and a federal primary regulator, or they may choose to be chartered and regulated by the state in which they are headquartered. OFR’s DFI provides general supervision over all Florida-chartered financial institutions, along with their subsidiaries and service corporations.³³ DFI is tasked with the administration of the financial institutions codes,³⁴ which apply to all Florida state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to Florida state-authorized or state-chartered financial institutions.³⁵

As a result of the dual regulatory system, the OFR does not have absolute regulatory authority over every financial institution operating in Florida. Florida-chartered depository institutions (banks and credit unions) are chartered by the OFR, but are additionally required to obtain deposit insurance,³⁶ and thus are also subject to examination and regulation by federal regulatory authorities. While the Federal Reserve serves as the primary federal regulator of a state bank which has elected to become a member bank of the Federal Reserve System,³⁷ the FDIC remains the primary federal regulator for non-member state-banks and remains authorized to make special examination of any insured bank when necessary. Likewise, state-chartered credit unions are subject to examination and regulation by the National Credit Union Administration (NCUA).³⁸ Thus, federal supervisors play an important role in ensuring and protecting the financial stability of financial institutions operating in Florida.

OFR is required to conduct an examination of the condition of each state financial institution “at least every 18 months,” but is authorized to conduct more frequent examinations based on the risk profile of the financial institution, prior examination results, or significant changes in the institutions or its operations. The examination process is risk-focused and covers all aspects of prudent management practices, including: governance, board and management oversight, identification, and reporting of complaints and regulation pertaining to discrimination. The

³² Section 655.005(1)(i), F.S.

³³ Section 655.012(1), F.S.

³⁴ Sections 655.001(1) and 655.012(1), F.S.

³⁵ *Id.*

³⁶ Section 658.38, F.S.

³⁷ 12 U.S.C. s. 248.

³⁸ Section 657.033, F.S.; 12 U.S.C. s. 1784.

examinations predominantly evaluate the strength of the Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk (CAMELS) of the financial institution, however, examiners evaluate compliance with Florida law, including confidentiality rules, as well.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).³⁹ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁴⁰ The Federal Reserve system is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.⁴¹ Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).⁴² Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.⁴³

Access to the Books and Records of a Financial Institution

Section 655.059, F.S., governs access to the books and records of a financial institution. Access to books and records is strictly limited. Books and records are expressly confidential, and may only be made available for inspection and examination to certain persons and government entities, including:

- The OFR and its duly authorized representatives;
- Any person duly authorized to act for the financial institution;
- Any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- The home country supervisor of an international banking corporation or international trust entity, under certain conditions;
- To the extent the books and records pertain to their own accounts or the determination of their voting rights, depositors, borrowers, members, and stockholders have the right to inspect; and
- To any person otherwise authorized by the board of directors.

Books and records may also be made available for inspection pursuant to a subpoena, under the following circumstances:

- As compelled by a court of competent jurisdiction;
- As compelled by a legislative subpoena; and
- To any federal or state law enforcement or prosecutorial instrumentality authorized to investigate criminal activity.

A person who willfully violates of these confidentiality rules is guilty of a felony of the third degree, punishable as provided in sections 775.082, 775.083, and 775.084, F.S.

³⁹ 12 U.S.C. s. 481.

⁴⁰ 12 U.S.C. s. 208.3 and 222.

⁴¹ 12 U.S.C. s. 248.

⁴² See 12 U.S.C. s. 1751, et. seq.

⁴³ Section 657.033, F.S.; 12 U.S.C. s. 1784.

Federal Right to Privacy Act (RFPA)

Pursuant to RFPA,⁴⁴ a federal government authority generally must seek a subpoena to access such books and records, and may only request financial records pursuant to a formal written request under certain conditions, one of which includes serving a copy of the request upon the customer.⁴⁵

2018 Federal Safe Senior Act

The federal Safe Senior Act⁴⁶ provides immunity for covered financial institutions from suit for disclosure of financial exploitation of senior citizens.

For purposes of the act, the term “exploitation” means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that:

- Uses the resources of a senior citizen for monetary or personal benefit, profit, or gain; or
- Results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets.

The act defines the term, “covered agency,” to include:

- A state financial regulatory agency, including a state securities or law enforcement authority and a state insurance regulator;
- Each of the Federal agencies represented in the membership of the Financial Institutions Examination Council established under section 1004 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303);⁴⁷
- A securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3);
- The Securities and Exchange Commission;
- A law enforcement agency; or
- A state or local agency responsible for administering adult protective service laws.

The term, “covered financial institution” means:

- A credit union;⁴⁸
- A depository institution;⁴⁹
- An investment adviser;
- A broker-dealer;
- An insurance company;
- An insurance agency; or

⁴⁴ 12 U.S.C. s. 3401 et seq.

⁴⁵ See 12 U.S.C. s. 3408.

⁴⁶ Public Law 115-174 (May 24, 2018); 132 STAT. 1336.

⁴⁷ This would include the Federal Reserve, Consumer Financial Protection Bureau, National Credit Union Association, Office of the Comptroller of the Currency.

⁴⁸ The term “credit union” has the meaning given the term in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301).

⁴⁹ The term “depository institution” has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

- A transfer agent.

The federal Safe Senior Act offers a safe harbor from liability for specified individuals or covered financial institutions in any civil or administrative proceedings for disclosing the suspected information regarding the suspected exploitation of a senior citizen to a covered agency, such as a state adult protective services agency, regulators, or law enforcement. A senior citizen for purposes of the act is an individual age 65 years or older. The civil and administrative immunity established by the act is provided on the condition that specified individuals⁵⁰ receive specified training on how to identify and report exploitative activity against seniors before making a report, and reports of suspected exploitation are made “in good faith” and “with reasonable care.”

Further, the act provides that a covered financial institution shall not be liable, including any civil or administrative proceeding, for a disclosure made by specified individuals if the following conditions are met:

- The individual was employed by, or, in the case of a registered representative, insurance producer, or investment adviser representative, affiliated or associated with, the covered financial institution at the time of the disclosure; and
- Before the time of the disclosure, such individual received the training.

However, the civil or administrative immunity provided by this act may not be construed to limit the liability of an individual or a covered financial institution in a civil action for any act, omission, or fraud that is not a disclosure described in the provision relating to the immunity from suit for individuals.

Training

A covered financial institution or a third party selected by a covered financial institution may provide the training described in the act to each officer or employee of, or registered representative, insurance producer, or investment adviser representative affiliated or associated with the covered financial institution who:

- Is specified in the act;
- May come into contact with a senior citizen as a regular part of the professional duties of the individual; or
- May review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

The act provides that the training described above must be provided as soon as reasonably practicable; and with respect to an individual who begins employment, or becomes affiliated or associated with a covered financial institution after the date of enactment of this act, not later than one year after the date on which the individual becomes employed by, or affiliated or associated with, the covered financial institution in a position described in the act.

⁵⁰ The employee served as a supervisor or in a compliance or legal function (including as a Bank Secrecy Act officer) for, or, in the case of a registered representative, investment adviser representative, or insurance producer, was affiliated or associated with, a covered financial institution.

Record Retention

The act requires a covered financial institution to maintain a record of each individual who is employed by, or affiliated or associated with, the covered financial institution in a position described in the act; and has completed the training described in the act. Upon request, the covered financial institution must provide a record described in the act to a covered agency with examination authority over the covered financial institution.

Relationship to State Law

The act provides that nothing in the act may be construed to preempt or limit any provision of state law, except only to the extent that the immunity described in the act provides a greater level of protection against liability to an individual described in the act or to a covered financial institution described in the act than is provided under state law.

III. Effect of Proposed Changes:

Section 1 creates s. 415.10341, F.S. The section creates definitions and a voluntary process for financial institutions to delay disbursements or transactions if they reasonably suspect, and report, the financial exploitation of specified adults, i.e., adults aged 65 years or older and vulnerable adults.

The term, “financial exploitation,” means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult, or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship, to divert or obtain control over the specified adult’s money, assets, or property through deception, intimidation, or undue influence to deprive the specified adult of the ownership, use, benefit, or possession of their money, assets, or property. The term “financial institution” means the same as that term is defined within ch. 655, F.S. “Specified adult” means a natural person 65 years of age or older, or a vulnerable adult as that term is defined in s. 415.102, F.S. The term “trusted contact” mean a natural person 18 years of age or older whom an account holder has expressly identified and recorded in a financial institution’s books and records as the person who may be contacted about the account.

Subsection (2) provides a statement of legislative findings and intent. Stated findings include:

- There are many Floridians that are at increased risk of financial exploitation due to their age or disability;
- Specified adults are at a statistically higher risk of being targeted for financial exploitation due to their accumulation of substantial assets and wealth compared to younger age groups; and
- Specified adults have the freedom and right to manage their assets, make investment choices, and spend their funds. Such rights may not be infringed upon absent a reasonable belief of financial exploitation.

The Legislative intent of the legislation includes:

- Preventing financial exploitation;
- Encouraging the constructive involvement of financial institutions;

- Providing immunity from liability for financial institutions and their employees who take action as authorized by the act; and
- Balancing the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process against the need to give financial institutions the ability to place narrow, time-limited restrictions on those rights in order to decrease the risk of loss due to abuse, neglect, or financial exploitation.

Subsection (3) authorizes a financial institution that reports suspected financial exploitation of a specified adult to delay a disbursement or transaction if certain criteria are met, and requires the financial institution to make and keep certain records related to the delay.

Subsection (4) creates timeframes for the delay of disbursements or transactions. Delays expire after 15 business days, but may be extended by an additional 30 business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief of financial exploitation. A court of competent jurisdiction may shorten or extend these timeframes.

Subsection (5) eliminates civil or administrative liability for a financial institution that acts in good faith and exercises reasonable care to comply with the bill.

Subsection (6) creates eligibility requirements that financial institutions must meet prior to delaying a disbursement or transaction under the bill. These requirements include:

- Developing training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conducting training for all employees as soon as reasonably practicable and maintaining a written record of all trainings conducted. With respect to an individual who begins employment with a covered financial institution after July 1, 2024, such training must be conducted within 1 year after the person becomes employed.
- Developing, maintaining, and enforcing written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

Subsection (7) clarifies that absent a reasonable belief of financial exploitation, the bill does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account, and any trusted contact named on such account.

Subsection (8) clarifies that the bill does not create new rights or impose new obligations on a financial institution under other applicable law.

Section 2 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The ability of a financial institution to place a delay on a disbursement or transaction, may decrease losses to account holders who are financially preyed upon because such a delay may prevent the money from ever getting into the hands of the bad actor. Once the bad actor receives the money, it is difficult, or in some cases impossible, to ever recover the money.

The bill may result in increased training and compliance costs for financial institutions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 415.10341 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 16, 2024

The CS provides the following changes:

- Allows a financial institution to extend a delay on a disbursement or transaction for an additional 30 days instead of 10 days.
- Revises eligibility requirements, relating to the frequency of training of employees, that financial institutions must meet prior to delaying a disbursement or transaction.
- Eliminates provisions relating to records of financial institutions available for review since state and federal law already address access to these records.

B. Amendments:

None.