

2018 Regular Session

HOUSE BILL NO. 505

BY REPRESENTATIVE CARMODY

FINANCIAL INSTITUTIONS: Protects certain individuals from financial exploitation

1 AN ACT

2 To enact Part XIII of Subchapter A of Chapter 3 of Title 6 of the Louisiana Revised Statutes  
3 of 1950, to be comprised of R.S. 6:341 through 346, relative to protecting eligible  
4 adults from financial exploitation; to provide for legislative intent; to provide for  
5 definitions; to provide for notices from certain persons and covered financial  
6 institutions; to provide for the delay of financial transactions in instances of  
7 suspicion of financial exploitation; to provide for applicability; to provide for  
8 immunity; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part XIII of Subchapter A of Chapter 3 of Title 6 of the Louisiana Revised  
11 Statutes of 1950, comprised of R.S. 6:341 through 346, is hereby enacted to read as follows:

12 PART XIII. PROTECTION OF ELIGIBLE ADULTS FROM

13 FINANCIAL EXPLOITATION

14 §341. Legislative Intent

15 It is the intent of the legislature enacting this Part to allow covered financial  
16 institutions the discretion to take actions to assist in detecting and preventing  
17 financial exploitation without liability. The legislature recognizes that covered  
18 financial institutions are in a unique position by conducting financial transactions on  
19 behalf of and at the request of their customers. Covered financial institutions have  
20 duties imposed by contract and duties imposed by both federal and state law to

1 conduct financial transactions requested by their customers faithfully and timely in  
2 accordance with the customer's instructions. Further, covered financial institutions  
3 do not have a duty to contravene the valid instructions of their customers, nor to  
4 prevent criminal activity directed at their customers, and nothing in this Part creates  
5 such a duty.

6 §342. Definitions

7 As used in this Part, the following terms and phrases have the meanings  
8 hereinafter ascribed to them:

9 (1) "Adult protection agency" has the same meaning as defined in R.S.  
10 15:1503.

11 (2) "Covered agency" means any of the following:

12 (a) Any federal, state, or local law enforcement agency.

13 (b) An adult protection agency.

14 (3) "Covered financial institution" means any bank, credit union, savings  
15 bank, savings and loan association, or trust company operating in Louisiana.

16 (4) "Eligible adult" means any of the following:

17 (a) Any person sixty years of age or older.

18 (b) Any person subject to the Adult Protective Services Act as defined in  
19 R.S. 15:1503.

20 (5) "Financial exploitation" means any of the following:

21 (a) The wrongful or unauthorized taking, withholding, appropriation, or use  
22 of money, assets, or property of an eligible adult.

23 (b) Any act or omission committed by a person in a representative capacity  
24 through power of attorney, act of procuracy, contract of mandate, or letters of  
25 curatorship of an eligible adult, or by any other means, for any of the following  
26 purposes:

27 (i) Obtaining control over, or depriving an eligible adult of ownership, use,  
28 benefit, or possession of his money, assets, or property by deception, intimidation,  
29 or undue influence.

1           (ii) Converting money, assets, or property of an eligible adult.

2           (6) "Financial transaction" means any of the following as applicable to  
3 services provided by a covered financial institution:

4           (a) A transfer or request to transfer or disburse funds or assets in an account.

5           (b) A request to initiate a wire transfer, initiate an automated clearing house  
6 (ACH) transfer, or issue a money order, cashier's check, or official check.

7           (c) A request to negotiate a check or other negotiable instrument.

8           (d) A request to change the ownership of, or access to, an account.

9           (e) A request to sell or transfer securities or other assets if the person selling  
10 or transferring the securities or assets is not required to register pursuant to Louisiana  
11 Securities Law as provided for in R.S. 51:701 et seq.

12           (f) A request for a loan, extension of credit, or draw on a line of credit.

13           (g) A request to encumber any movable or immovable property.

14 §343. Notices

15           A. On and after January 1, 2019, a director, officer, employee, attorney,  
16 accountant, or other agent of a covered financial institution, who is acting as a  
17 representative of the covered financial institution, and who has cause to believe that  
18 financial exploitation of an eligible adult who has requested a financial transaction  
19 involving the covered financial institution, is occurring, has or may have occurred,  
20 or is being attempted, or has been, or may have been attempted, shall notify the  
21 financial institution of the suspected financial exploitation.

22           B. A covered financial institution may notify any covered agency if the  
23 covered financial institution believes that the financial exploitation of an eligible  
24 adult is occurring, has or may have occurred, or is being attempted, or has been, or  
25 may have been attempted.

26           C. A covered financial institution may notify any third party reasonably  
27 associated with the eligible adult if the covered financial institution believes that the  
28 financial exploitation of an eligible adult is occurring, has or may have occurred, or

1 is being attempted, or has been, or may have been attempted. A third party  
2 reasonably associated with the eligible adult shall include, but not be limited to:

3 (A)(1) A parent, spouse, adult child, sibling, or other known family member  
4 or close associate of an eligible adult.

5 (2) An authorized contact provided by the eligible adult to the covered  
6 financial institution.

7 (3) A co-owner, additional authorized signatory, or beneficiary on the  
8 eligible adult's account.

9 D. A covered financial institution may choose not to notify any third party  
10 that the covered financial institution believes is, may be, or may have been engaged  
11 in financial exploitation of the eligible adult.

12 §344. Delaying financial transactions

13 A. A covered financial institution may, but is not required to, delay  
14 completion or execution of a financial transaction involving an account of an eligible  
15 adult, an account on which an eligible adult is a beneficiary, or an account of a  
16 person suspected of perpetrating financial exploitation if either of the following  
17 apply:

18 (1) The covered financial institution reasonably believes that the requested  
19 financial transaction will result in financial exploitation of an eligible adult.

20 (2) A covered agency provides information demonstrating to the financial  
21 institution that it is reasonable to believe that financial exploitation is occurring, has  
22 or may have occurred, or is being attempted, or has been, or may have been  
23 attempted.

24 B. If a covered financial institution determines to delay a financial  
25 transaction pursuant to Subsection A of this Section, the covered financial institution  
26 shall, no later than two business days after the financial transaction is delayed,  
27 provide written notification of the delay and the reason for the delay to all parties  
28 authorized to transact business on the account, unless any such party is reasonably  
29 believed to have engaged in attempted financial exploitation of the eligible adult.

1           C. If a covered financial institution determines to delay a financial  
2           transaction pursuant to Subsection A of this Section, the covered financial institution  
3           may provide notification of the delay, the reason for the delay, and any additional  
4           information about the financial transaction to any covered agency.

5           D. Except as ordered by a court, a covered financial institution is not  
6           required to delay a financial transaction when provided with information by a  
7           covered agency alleging that financial exploitation is occurring, has or may have  
8           occurred, or is being attempted, or has been, or may have been attempted, but may  
9           use its discretion to determine whether to delay a financial transaction based on the  
10          information available to the covered financial institution.

11          E. Except as provided in Subsection F of this Section, any delay of a  
12          financial transaction as authorized pursuant to this Section shall expire or be  
13          terminated when the earliest of any of the following circumstances occur:

14           (1) The covered financial institution reasonably determines that the financial  
15          transaction will not result in financial exploitation of the eligible adult.

16           (2) Fifteen business days pass from the date on which the covered financial  
17          institution first initiated the delay of the financial transaction

18          F.(1) A covered financial institution may extend the delay provided for in  
19          Subsection E of this Section upon receiving a request to extend the delay from any  
20          covered agency, in which case the delay shall expire or be terminated no later than  
21          twenty-five business days from the date on which the covered financial institution  
22          first initiated the delay of the financial transaction.

23           (2) A court of competent jurisdiction may enter an order extending or  
24          shortening a delay, or providing other relief, based on the petition of the covered  
25          financial institution, any covered agency, or other interested party.

26          §345. Applicability of other laws

27          Notwithstanding the provisions of R.S. 6:333, or any other law to the  
28          contrary, a covered financial institution may act in accordance with the provisions  
29          of this Part.

1        §346. Immunity

2            A. A covered financial institution, or any of its directors, officers,  
3            employees, attorneys, accountants, or other agents, is immune from all criminal,  
4            civil, and administrative liability for any act or failure to act pursuant to this Part, and  
5            nothing in this Part shall be construed to create any duty, obligation or mandate for  
6            a covered financial institution, or any of its directors, officers, employees, attorneys,  
7            accountants, or other agents.

8            B. No claim may be brought against any covered agency or the state of  
9            Louisiana in connection with the receipt of or response to any notice of financial  
10           exploitation.

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 505 Original

2018 Regular Session

Carmody

**Abstract:** Provides for the protection of certain individuals from financial exploitation and regulates the ability of covered financial institutions to delay disbursements of certain funds.

Proposed law adds notice of information or financial records pursuant to proposed law by banks or bank affiliates to an enumerated list of authorized financial disclosures.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification.

Proposed law authorizes a director, officer, employee, attorney, accountant, or other agent of a covered financial institution, who is acting as a representative of the covered financial institution, and who has cause to believe that financial exploitation of an eligible adult who has requested a financial transaction involving the covered financial institution, is occurring, has or may have occurred, or is being attempted, or has been, or may have been attempted, shall notify the financial institution of the suspected financial exploitation.

Proposed law authorizes a covered financial institution to notify a covered agency if the covered financial institution believes that the financial exploitation of eligible adults is being attempted, may have been attempted, or may have occurred.

Proposed law authorizes a covered financial institution to notify any third party reasonably associated with an eligible adults if the covered financial institution believes that the financial exploitation of certain individuals is being attempted, may have been attempted, or may have occurred.

Proposed law clarifies with an exception that the covered institution shall have discretion in refusing to notify a party reasonably associated with certain individuals who are suspected of financial exploitation of eligible adults.

Proposed law provides that no covered financial institution, or any of its directors, officers, employees, attorneys, accountants, or other agents, shall be civilly or criminally liable to any person, including any customer, for any act or failure to act pursuant to proposed law, and nothing in proposed law shall be construed to create any duty or mandate imposed on a covered financial institution.

Proposed law provides that no claim shall be brought against any covered agency or the state of Louisiana in connection with the receipt of or in response to any notice of financial exploitation.

(Adds R.S. 6:341-346)