

2018 Regular Session

HOUSE BILL NO. 503

BY REPRESENTATIVES CARMODY, CHAD BROWN, COUSSAN, COX, HILFERTY,
HOLLIS, JEFFERSON, JORDAN, LYONS, PUGH, REYNOLDS, AND THOMAS

FINANCIAL INSTITUTIONS: Protects certain individuals from financial exploitation

1 AN ACT

2 To enact Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 6:1371 through 1376, relative to protecting eligible adults from financial
4 exploitation; to provide for legislative intent; to provide for definitions; to provide
5 for notices relative to covered financial institutions; to provide for the delay of
6 financial transactions in instances of suspicion of financial exploitation; to provide
7 for applicability; to provide for immunity; to provide for effectiveness; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 6:1371 through 1376, is hereby enacted to read as follows:

12 CHAPTER 20. PROTECTION OF ELIGIBLE ADULTS FROM

13 FINANCIAL EXPLOITATION

14 §1371. Legislative intent

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

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

6 §1372. Definitions

7 As used in this Chapter, 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 provided in
19 R.S. 15:1501 et seq.

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 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 §1373. Notices

15 A. A covered financial institution may notify any covered agency if the
16 covered financial institution believes that the financial exploitation of an eligible
17 adult is occurring, has or may have occurred, or is being attempted, or has been, or
18 may have been attempted.

19 B. A covered financial institution may notify any third party reasonably
20 associated with the eligible adult if the covered financial institution believes that the
21 financial exploitation of an eligible adult is occurring, has or may have occurred, or
22 is being attempted, or has been, or may have been attempted. A third party
23 reasonably associated with the eligible adult includes but is not limited to all of the
24 following:

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

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

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

3 C. A covered financial institution may choose not to notify any third party
4 that the covered financial institution believes is, may be, or may have been engaged
5 in financial exploitation of the eligible adult.

6 D. A covered financial institution shall make a reasonable effort, at least
7 annually, to notify all employees of the covered financial institution of their ability
8 to report potential financial exploitation of an eligible adult to personnel within the
9 covered financial institution.

10 §1374. Delaying financial transactions

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

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

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

22 B. If a covered financial institution determines to delay a financial
23 transaction pursuant to Subsection A of this Section, the covered financial institution
24 shall, no later than two business days after the financial transaction is delayed, send
25 written notification of the delay and the reason for the delay to all parties authorized
26 to transact business on the account for which the covered financial institution has
27 contact information, unless any such party is reasonably believed to have engaged
28 in attempted financial exploitation of the eligible adult. The notification described
29 in this Subsection may be provided by electronic means.

1 C. If a covered financial institution delays a financial transaction pursuant
2 to Subsection A of this Section, the covered financial institution may provide
3 notification of the delay, the reason for the delay, and any additional information
4 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 §1375. 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 Chapter.

1 §1376. 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 Chapter,

5 and nothing in this Chapter shall be construed to create any duty, obligation or

6 mandate for a covered financial institution, or any of its directors, officers,

7 employees, attorneys, accountants, or other agents.

8 B. No claim shall 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.

11 Section 2. The provisions of this Act shall become effective October 1, 2018.

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 503 Engrossed	2018 Regular Session	Carmody
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Abstract: Provides for the protection of eligible adults from financial exploitation and regulates the ability of covered financial institutions to delay disbursements of certain funds.

Proposed law provides legislative intent and generally authorizes a covered financial institution's discretion to take certain actions to assist in detecting and preventing financial exploitation of an eligible adult without liability.

Proposed law defines the following: "adult protection agency", "covered agency", "covered financial institution", "eligible adult", "financial exploitation", and "financial transaction".

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

Proposed law authorizes a covered financial institution's discretion in refusing to notify a party reasonably associated with individuals who are suspected of financial exploitation of eligible adults.

Proposed law requires a covered financial institution to make a reasonable effort, at least annually, to notify all employees of the covered financial institution of their ability to report potential financial exploitation of an eligible adult to personnel within the covered financial institution.

Proposed law authorizes a covered financial institution to delay completion or execution of a financial transaction involving the account of an eligible adult, or the account of a person

suspected of perpetrating financial exploitation of the eligible adult, if certain conditions apply. Authorizes the covered financial institution to provide notice to certain persons regarding the delay.

Proposed law provides if a covered financial institution delays a financial transaction regarding an eligible adult, the covered financial institution is required to send written notification of the delay, no later than 2 business days after the delay, to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in attempted financial exploitation. Authorizes the notification to be provided electronically.

Except as ordered by a court, proposed law does not require a covered financial institution to delay a financial transaction, when such institution is provided with information by a covered agency alleging that financial exploitation of an eligible adult is occurring, has or may have occurred, or is being attempted, or has or may have been attempted, but may use its discretion to determine whether to delay a financial transaction based on the information available to the covered financial institution.

Proposed law requires the delay of a financial transaction to expire when the earliest of either circumstances apply:

- (1) The covered financial institution reasonably determines that the financial transaction will not result in financial exploitation of the eligible adult.
- (2) 15 business days from the date on which the covered financial institution first initiated the delay of the financial transaction.

Proposed law authorizes a covered financial institution to extend the delay of a financial transaction upon receiving such a request from any covered agency, in which case the delay is required to expire or be terminated no later than 25 business days from the date on which the covered financial institution first initiated the delay of the financial transaction.

Proposed law authorizes a court of competent jurisdiction to enter an order extending or shortening a delay, or providing other relief, based on the petition of the covered financial institution, any covered agency, or other interested party.

Proposed law provides that no covered financial institution, or any of its directors, officers, employees, attorneys, accountants, or other agents, are civilly or criminally liable to any person for any act or failure to act pursuant to proposed law.

Nothing in proposed law creates the duty or mandate of a covered financial institution to assist in detecting and preventing financial exploitation.

Proposed law prohibits persons from bringing claims against any covered agency or the state in connection with the receipt of or in response to any notice of financial exploitation.

Effective Oct. 1, 2018.

(Adds R.S. 6:1371-1376)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Make technical changes and language substitutions to improve clarity and readability.

2. Correct the citation relative to the Adult Protective Services Act.
3. Require a covered financial institution to notify employees of their ability to report potential financial exploitation of an eligible adult to personnel within the respective covered financial institution.
4. Require a covered financial institution delaying a financial transaction to send, within 2 business days of the delay, written notification of the delay and reasons therefor to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in attempted financial exploitation of the eligible adult. Notification may be made electronically.
5. Clarify the intent of prohibiting persons from bringing claims against any covered agency or the state in connection with the receipt of or in response to any notice of financial exploitation.
6. Change the effective date from January 1, 2019 to October 1, 2018.