

New Fla. Financial Abuse Law May See Limited Buy-In

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Florida S.B. 556 went into effect on Jan. 1, establishing the Protection of Specified Adults Statute, codified in Florida Statutes Chapter 517, Section 415.10341, which implements protections for the financial accounts of elderly and vulnerable adults.

In light of Florida's aging population and its susceptibility to financial exploitation, the Protection of Specified Adults Statute aims to empower financial institutions to intervene when they suspect abuse. However, the statute's effectiveness is hindered by significant compliance requirements and unclear immunity provisions.

This analysis explores the potential impact of the statute, highlighting the interplay between its intended protective measures and the practical limitations faced by financial institutions.

The statute permits a financial institution to delay a disbursement or transaction relating to a "specified adult." If a financial institution reasonably suspects that the transaction would result in a specified adult's financial exploitation and delays a disbursement or transaction following the procedures outlined in the Protection of Specified Adults Statute, the financial institution is immune from administrative or civil liability for the delay.^[1]

The statute defines "specified adult" as either an individual who is 65 or older, or one deemed to be a "vulnerable adult," who is the beneficial owner or the beneficiary of the account with the financial institution.^[2] 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."^[3]

With the statute now in effect, Florida has joined a growing number of states that have enacted legislation based on a model act adopted by the North American Securities Administrators Association. The association's Model Act to Protect Vulnerable Adults from Financial Exploitation is designed to provide immunity to financial institutions that take proactive steps to hold suspicious transactions and report suspected elder financial exploitation.^[4] While most state statutes apply only broker-dealers and investment advisers, Florida joins a minority of states that include depository institutions among the institutions that may delay transactions.^[5]

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The statute does not impose an affirmative requirement that a financial institution delay disbursements or transactions where financial exploitation of specified adults may be afoot, though the Florida Legislature clearly intended for banks and other financial institutions operating in Florida to be more active in preventing the exploitation of elderly and vulnerable adults with its adoption.

Statutory Framework and Requirements

The new statute applies to financial institutions, as defined by Chapter 655 of the Florida Statutes. This includes state-chartered and national banks, state branches and agencies of international banks, trust companies, Edge Act corporations, and other financial institutions operating in Florida.[6]

Investment advisers and broker-dealers are not covered by the new statute. However, the Florida Securities and Investor Protection Act already provides investment advisers and broker-dealers with immunity from administrative and civil liability connected to delays on disbursements or transactions relating to specified adults, using language that largely mirrors that in the new statute.[7]

A financial institution wishing to rely on the immunity granted under the Protection of Specified Adults Statute must comply with the following conditions and procedures.

Reporting

A financial institution must report the suspected financial exploitation of a specified adult to the Florida Central Abuse Hotline, pursuant to the mandatory reporting statute in Section 415.1034 of the Florida Statutes, prior to placing a hold on a disbursement or transaction.[8]

However, the mandatory reporting statute only requires the reporting of concerns about a vulnerable adult. It does not include a process for reporting concerns about adults aged 65 years and older more generally.[9] As a result, specified adults who are not vulnerable adults are not covered by the mandatory reporting statute.

Reasonable Belief

Under the Protection of Specified Adults Statute, the financial institution must reasonably believe that "financial exploitation of the specified adult has occurred, has been attempted, or will be attempted" in connection with a disbursement or transaction.[10]

Internal Review

The financial institution must immediately initiate an "internal review of the facts and circumstances" that caused the financial institution to reasonably believe that "the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted." [11]

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Notice

Within three business days of placing the delay, written notice must be provided to all parties authorized to transact business on the account, as well as any trusted contact on the account, unless the financial institution believes any such parties are engaged in the suspected exploitation.[12]

Recordkeeping

The financial institution must maintain a record of the facts and circumstances that caused the financial institution to report suspected financial exploitation for at least five years from the date of the delayed disbursement or transaction.[13]

Time Limit on Delaying Disbursements or Transactions

A delay on a disbursement or transaction expires 15 business days after the delay was first placed. This may be extended for an additional 30 business days if the financial institution's internal review continues to support the reasonable belief that "financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted." [14]

Trainings

The financial institution must create, implement and maintain records of employee training policies or programs relating to reporting and the internal review of the potential financial exploitation of specified adults.[15]

Written Policies and Procedures

The financial institution must maintain written procedures regarding the internal review process for suspected financial exploitation, including, if applicable, the manner in which employees are required to report suspected financial exploitation to supervisors.[16]

Potential Impact and Outlook

Florida's population is particularly vulnerable to threats of financial exploitation due to the high percentage of adults age 65 or older with potentially declining cognitive abilities and possibly less familiarity with technology.[17] As described in the Florida Senate's analysis of S.B. 556, some of the most commonly reported forms of financial exploitation involve theft through depository accounts and money transfer scams.[18]

A delay on a disbursement or transaction placed by a financial institution can decrease financial losses by allowing the prompt investigation of suspected financial exploitation before funds leave an account. Once funds leave an account, it is difficult, or in some cases impossible, to recover the

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funds.

However, the Protection of Specified Adults Statute comes with a heavy compliance toll. In addition to the various requirements outlined in the statutory text, financial institutions will need to, as a gating item, make a determination that an individual qualifies as a vulnerable adult and institute policies and procedures to assess whether an individual qualifies as a vulnerable adult under the legal standard set forth in the Florida Statutes. Notably, a court order is not required for an individual to be deemed a vulnerable adult.

The Protection of Specified Adults Statute does not make clear that banks and other financial institutions will be immune from liability when they take action on accounts relating to individuals over the age of 65 but who are not vulnerable adults.

As noted above, financial institutions are required to report the suspected financial exploitation of vulnerable adults — but not necessarily adults 65 years and older — pursuant to the mandatory reporting statute. This creates a gap in coverage for delays on the accounts of individuals over the age of 65 who are not vulnerable adults — a group that likely represents the majority of the Florida elder community.

Financial institutions operating in Florida might find it more expedient to justify their actions with respect to an account involving the suspected financial exploitation of specified adults, particularly individuals 65 years and older who are not vulnerable adults, by relying on the federal Bank Secrecy Act and related suspicious activity report framework.^[19]

Accordingly, while the Protection of Specified Adults Statute has the goal of encouraging the constructive involvement of financial institutions in the fight against elder financial exploitation, the statute may have limited practical impact because financial institution engagement is voluntary, the breadth of the immunity is uncertain and there is a significant compliance burden.

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1. See Section 415.10341(5), Florida Statutes ("A financial institution that acts in good faith and exercises reasonable care to comply with this section is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section. This subsection does not supersede or diminish any immunity granted elsewhere in this chapter.").
2. See Section 415.10341(1)(c), Florida Statutes.

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3. See Section 415.102(28), Florida Statutes.
4. North American Securities Administrators Association, *NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation: Legislative Text and Summary* (last updated October 2024), available at <https://www.nasaa.org/wp-content/uploads/2024/10/NASAA-Legislative-Commentary-for-the-Model-Act-to-Protect-Vulnerable-Adults-from-Financial-Exploitation-10.22.24-F.pdf>.
5. See Federal Trade Commission, *Financial Institution Transaction Holds* (October 2024), available at https://consumer.ftc.gov/system/files/consumer_ftc_gov/pdf/FinancialInstitutionTransactionHoldsStateOverview.pdf.
6. Chapter 655, Florida Statutes, defines "financial institution" broadly to include a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. See 655.005(1)(i), Florida Statutes.
7. See Section 517.34, Florida Statutes.
8. See Section 415.1041(3) ("If a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply...").
9. See Section 415.1034, Florida Statutes. Because of the requirement that a financial institution first report the suspected financial exploitation pursuant to the mandatory reporting statute before placing a hold, it is unclear whether delays on accounts related to adults who are 65 and older but do not qualify as vulnerable adults will be eligible for immunity.
10. See Section 415.10341(5), Florida Statutes.
11. See Section 415.10341(3)(a), Florida Statutes.
12. See Section 415.10341(3)(b)(1), Florida Statutes.
13. See Section 415.10341(3)(b)(2), Florida Statutes.
14. See Section 415.10341(4), Florida Statutes.
15. See Section 415.10341(6)(a)-(b), Florida Statutes. Note that trainings should be conducted "as soon as reasonably practicable." For new employees, such training must be conducted within one year after the date on which the individual becomes employed with the covered financial institution.
16. See Section 415.10341(6)(c), Florida Statutes.

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17. See Florida Senate Bill 556, Bill Analysis, Banking and Insurance (Pre-Meeting) (Jan. 1, 2024).
18. See id.
19. The Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury, recommends filing suspicious activity reports, or SARs, with respect to any suspicious transaction that a financial institution believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations or the transaction amounts are below the mandatory filing threshold. FinCEN even provides a designated category of suspicious activity entitled "elder financial exploitation" for financial institutions to check on SARs. See FIN-2011-A003, Advisory to Financial Institutions on Filing Suspicious Activity Reports on Elder Financial Exploitation (Feb. 22, 2011), available at https://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a003.pdf. See also Board of Governors of the Federal Reserve System et al., Interagency Statement on Elder Financial Exploitation (Dec. 4, 2024), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20241204a1.pdf>.

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