

ACT No. 434

HOUSE BILL NO. 503

BY REPRESENTATIVES CARMODY, AMEDEE, BARRAS, BERTHELOT, CHAD BROWN, TERRY BROWN, CHANEY, COUSSAN, COX, CREWS, EDMONDS, FALCONER, HAVARD, HENSGENS, HILFERTY, HOLLIS, HORTON, HOWARD, JACKSON, JEFFERSON, JORDAN, NANCY LANDRY, LYONS, MCFARLAND, MIGUEZ, GREGORY MILLER, JIM MORRIS, PUGH, PYLANT, REYNOLDS, SEABAUGH, SMITH, AND THOMAS AND SENATOR THOMPSON

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

CHAPTER 20. PROTECTION OF ELIGIBLE ADULTS FROM

FINANCIAL EXPLOITATION

§1371. Legislative intent

It is the intent of the legislature in enacting this Chapter to allow covered financial institutions the discretion to take actions to assist in detecting and

1 preventing financial exploitation without liability. The legislature recognizes that
2 covered financial institutions are in a unique position by conducting financial
3 transactions on behalf of and at the request of their customers. Covered financial
4 institutions have duties imposed by contract and duties imposed by both federal and
5 state law to conduct financial transactions requested by their customers faithfully and
6 timely in accordance with the customer's instructions. Further, covered financial
7 institutions do not have a duty to contravene the valid instructions of their customers,
8 nor to prevent criminal activity directed at their customers, and nothing in this
9 Chapter creates such a duty.

10 §1372. Definitions

11 As used in this Chapter, the following terms and phrases have the meanings
12 hereinafter ascribed to them:

13 (1) "Adult protection agency" has the same meaning as defined in R.S.
14 15:1503.

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

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

17 (b) An adult protection agency.

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

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

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

22 (b) Any person subject to the Adult Protective Services Act as provided in
23 R.S. 15:1501 et seq.

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

25 (a) The wrongful or unauthorized taking, withholding, appropriation, or use
26 of money, assets, beneficial ownership interest, or property of an eligible adult.

27 (b) Any act or omission committed by a person in a representative capacity
28 through trust, power of attorney, act of procuracy, contract of mandate, or letters
29 of curatorship of an eligible adult, or by any other means, for any of the following
30 purposes:

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

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

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

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

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

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

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

12 (e) A request to sell or transfer securities or other assets, or a request to affix
 13 a Medallion Stamp or provide any form of guarantee or endorsement in connection
 14 with an attempt to sell or transfer securities or other assets, if the person selling or
 15 transferring the securities or assets is not required to register pursuant to Louisiana
 16 Securities Law as provided in R.S. 51:701 et seq.

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

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

19 (h) A request to designate or change the designation of beneficiaries to
 20 receive any property, benefit, or contract right on the eligible adult's death.

21 §1373. Notices

22 A. 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 B. 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
 29 is being attempted, or has been, or may have been attempted. A third party

1 reasonably associated with the eligible adult includes but is not limited to all of the
 2 following:

3 (1) A parent, spouse, adult child, sibling, or other known family member or
 4 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 C. A covered financial institution may choose not to notify any third party
 10 reasonably associated with the eligible adult of suspected financial exploitation of
 11 the eligible adult, if the covered financial institution believes such third party is, may
 12 be, or may have been engaged in financial exploitation of the eligible adult.

13 D. A covered financial institution shall make a reasonable effort, at least
 14 annually, to notify all employees of the covered financial institution of their ability
 15 to report potential financial exploitation of an eligible adult to personnel within the
 16 covered financial institution.

17 §1374. Delaying financial transactions

18 A. A covered financial institution may, but is not required to, delay
 19 completion or execution of a financial transaction involving an account of an eligible
 20 adult, an account on which an eligible adult is a beneficiary, or an account of a
 21 person suspected of perpetrating financial exploitation if either of the following
 22 conditions apply:

23 (1) The covered financial institution reasonably believes that the requested
 24 financial transaction may result in financial exploitation of an eligible adult.

25 (2) A covered agency provides information demonstrating to the financial
 26 institution that it is reasonable to believe that financial exploitation is occurring, has
 27 or may have occurred, or is being attempted, or has been, or may have been
 28 attempted.

29 B. If a covered financial institution determines to delay a financial
 30 transaction pursuant to Subsection A of this Section, the covered financial institution

1 shall, no later than two business days after the financial transaction is delayed, send
2 written notification of the delay and the reason for the delay to all parties authorized
3 to transact business on the account for which the covered financial institution has
4 contact information, unless any such party is reasonably believed to have engaged
5 in attempted financial exploitation of the eligible adult. The notification described
6 in this Subsection may be provided by electronic means.

7 C. If a covered financial institution delays a financial transaction pursuant
8 to Subsection A of this Section, the covered financial institution may provide
9 notification of the delay, the reason for the delay, and any additional information
10 about the financial transaction to any covered agency.

11 D. Except as ordered by a court, a covered financial institution is not
12 required to delay a financial transaction when provided with information by a
13 covered agency alleging that financial exploitation is occurring, has or may have
14 occurred, or is being attempted, or has been, or may have been attempted, but may
15 use its discretion to determine whether to delay a financial transaction based on the
16 information available to the covered financial institution.

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

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

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

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

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

4 §1375. Applicability of other laws

5 Notwithstanding the provisions of R.S. 6:333 or any other law to the
6 contrary, a covered financial institution may act in accordance with the provisions
7 of this Chapter.

8 §1376. Immunity

9 A. (1) A covered financial institution and its directors, officers, employees,
10 attorneys, accountants, agents, and other representatives shall have no duty to act
11 pursuant to this Chapter or otherwise to protect an eligible adult from financial
12 exploitation by a third person.

13 (2) A covered financial institution and its directors, officers, employees,
14 attorneys, accountants, agents, and other representatives shall be immune from all
15 criminal, civil, and administrative liability for not taking action pursuant to this
16 Chapter.

17 (3) A covered financial institution and its directors, officers, employees,
18 attorneys, accountants, agents, or other representatives who choose to act pursuant
19 to the authority granted in this Chapter shall be immune from all criminal, civil, and
20 administrative liability for any act taken pursuant to this Chapter, unless such act of
21 the financial institution or its representatives was grossly negligent and caused
22 pecuniary loss to the eligible adult who was suspected of being a victim of financial
23 exploitation.

24 B. No claim shall be brought against any covered agency or the state of
25 Louisiana in connection with the receipt of or response to any notice of financial
26 exploitation.

27 C. The immunity provided for in this Section shall not extend to any
28 individual in a case when such individual is a principal, conspirator, or an accessory
29 after the fact to a criminal offense involving the financial exploitation of an eligible
30 adult.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____