

2018 Regular Session

HOUSE BILL NO. 503

BY REPRESENTATIVE CARMODY

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

6 §1374. Delaying financial transactions

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

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

14 (2) A covered agency provides information demonstrating to the financial
15 institution that it is reasonable to believe that financial exploitation is occurring, has
16 or may have occurred, or is being attempted, or has been, or may have been
17 attempted.

18 B. If a covered financial institution determines to delay a financial
19 transaction pursuant to Subsection A of this Section, the covered financial institution
20 shall make a reasonable effort to provide written or oral notification of the delay and
21 the reason for the delay to one or more parties authorized to transact business on the
22 account, unless any such party is reasonably believed to have engaged in attempted
23 financial exploitation of the eligible adult.

24 C. If a covered financial institution delays a financial transaction pursuant
25 to Subsection A of this Section, the covered financial institution may provide
26 notification of the delay, the reason for the delay, and any additional information
27 about the financial transaction to any covered agency.

28 D. Except as ordered by a court, a covered financial institution is not
29 required to delay a financial transaction when provided with information by a

1 covered agency alleging that financial exploitation is occurring, has or may have
2 occurred, or is being attempted, or has been, or may have been attempted, but may
3 use its discretion to determine whether to delay a financial transaction based on the
4 information available to the covered financial institution.

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

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

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

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

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

20 §1375. Applicability of other laws

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

24 §1376. Immunity

25 A. A covered financial institution, or any of its directors, officers,
26 employees, attorneys, accountants, or other agents, is immune from all criminal,
27 civil, and administrative liability for any act or failure to act pursuant to this Chapter,
28 and nothing in this Chapter shall be construed to create any duty, obligation or

1 mandate for a covered financial institution, or any of its directors, officers,
2 employees, attorneys, accountants, or other agents.

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

6 Section 2. The provisions of this Act shall become effective January 1, 2019.

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 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 covered financial institution to notify a covered agency 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 authorizes a covered financial institution to notify any third party reasonably associated with certain individuals 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 certain individuals.

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 in connection with the receipt of or in response to any notice of financial exploitation.

Effective Jan. 1, 2019.

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