

2018 Regular Session

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

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

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

8 §1372. Definitions

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

11 (1) "Adult protection agency" has the same meaning as defined in R.S.  
12 15:1503.

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

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

15 (b) An adult protection agency.

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

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

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

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

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

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

25 (b) Any act or omission committed by a person in a representative capacity  
26 through power of attorney, act of procuration, contract of mandate, or letters of  
27 curatorship of an eligible adult, or by any other means, for any of the following  
28 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 if the person selling  
13          or transferring the securities or assets is not required to register pursuant to Louisiana  
14          Securities Law as provided in R.S. 51:701 et seq.

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

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

17          §1373. Notices

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

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

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

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

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

5           C. A covered financial institution may choose not to notify any third party  
6           reasonably associated with the eligible adult of suspected financial exploitation of  
7           the eligible adult, if the covered financial institution believes such third party is, may  
8           be, or may have been engaged in financial exploitation of the eligible adult.

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

13          §1374. Delaying financial transactions

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

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

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

25          B. If a covered financial institution determines to delay a financial  
26          transaction pursuant to Subsection A of this Section, the covered financial institution  
27          shall, no later than two business days after the financial transaction is delayed, send  
28          written notification of the delay and the reason for the delay to all parties authorized  
29          to transact business on the account for which the covered financial institution has

1 contact information, unless any such party is reasonably believed to have engaged  
2 in attempted financial exploitation of the eligible adult. The notification described  
3 in this Subsection may be provided by electronic means.

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

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

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

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

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

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

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

1        §1375. Applicability of other laws

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

5        §1376. Immunity

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

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

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

19       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 Reengrossed

2018 Regular Session

Carmody

**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.

The immunity from liability provided in proposed law does not extend to any individual in a case when such individual is a principal, conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of an eligible adult.

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.

#### The House Floor Amendments to the engrossed bill:

1. Provide that immunity from liability provided in proposed law does not extend to any individual in a case when such individual is a principal, conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of an eligible adult.