

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 515 Protection of Specified Adults

**SPONSOR(S):** Health & Human Services Committee and Insurance & Banking Subcommittee, Silvers and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 556

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**FINAL HOUSE FLOOR ACTION:** 104 Y's 1 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/HB 515 passed the House on March 6, 2024, as CS/CS/SB 556, as amended, and was returned to the Senate. On March 7, 2024, the Senate refused to concur in the House Amendment to the Senate bill and returned the bill to the House. The House receded and passed the Senate bill on March 7, 2024.

Florida has the second highest percentage of senior residents in the nation. In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population. By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation. Up to 5 million older Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion.

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The bill amends the Act to increase consumer financial transaction protections.

The bill authorizes a financial institution which reports suspected financial exploitation of a specified adult to then delay a disbursement or transaction from an account of the specified adult or an account for which the specified adult is a beneficiary or beneficial owner, provided certain conditions are met. When the financial institution takes this action, it must create and maintain for at least five years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes certain information.

The bill also:

- Requires financial institutions to develop certain trainings and policies to educate employees on issues pertaining to financial exploitation of specified adults before placing a delay on any disbursement or transaction; and
- Provides immunity from administrative and civil liability to a financial institution that acts in good faith and exercises reasonable care to comply with the bill's provisions.

The bill has no fiscal impact on state or local government.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2025.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Elder Population in Florida

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 54.1 million in 2019<sup>1</sup> to 80.8 million by 2040.<sup>2</sup> Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.<sup>3</sup> In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population.<sup>4</sup> By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.<sup>5</sup>

##### Adult Protective Services Act

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The Act defines "vulnerable adult" as 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 brain damage, or the infirmities of aging.<sup>6</sup> The term implicitly includes elderly persons, but also incorporates disabled adults and other adults whom the Legislature has determined to be at risk of abuse, neglect, and exploitation, and in need of protective services.<sup>7</sup>

The Department of Children and Families (DCF) protects vulnerable adults from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse pursuant to the Act.<sup>8</sup> In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older.<sup>9</sup>

##### Financial Abuse in Elder Populations

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>10</sup> Common types of elderly abuse include neglect, physical abuse, psychological abuse, and financial abuse.<sup>11</sup> Up to 5 million older

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<sup>1</sup> U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020), Release Number: CB20-99, <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited Jan. 10, 2024).

<sup>2</sup> U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021), [https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final\\_.pdf](https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf) (last visited Jan. 10, 2024)

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Census Bureau, *Quick Facts – Florida*, <https://www.census.gov/quickfacts/fact/table/FL#> (last visited Jan. 10, 2024).

<sup>5</sup> Florida Office of Economic & Demographic Research, *Florida Population by Age Group*. Available at [http://edr.state.fl.us/Content/population-demographics/data/pop\\_census\\_day-2020.pdf](http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf) (last visited Jan. 10, 2024).

<sup>6</sup> S. 415.102(28), F.S.

<sup>7</sup> S. 415.101(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Email from Tarah Yeager, gubernatorial fellow, Department of Children and Families, Re: APS Statistics Info Request (March 22, 2023). On file with the Health and Human Services Committee.

<sup>10</sup> U.S. Department of Justice, *About Elder Abuse*, <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Jan. 10, 2024).

<sup>11</sup> U.S. Department of Justice, *Types of Elder Abuse*, <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Jan. 10, 2024).

Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion.<sup>12</sup>

Financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.<sup>13</sup> For example, neighbors, caregivers, professionals, and even family or friends may take money without permission, fail to repay the money they owe, charge too much for services, or not even do what they were paid to do.<sup>14</sup>

#### FINANCIAL SCAMS

Fraudulent scams that target elderly individuals are on the rise.<sup>15</sup> The most common fraudulent scams targeting these populations include:

- **Government impersonation scams**, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.<sup>16</sup>
- **Sweepstakes scams**, in which scammers call an older adult to tell them they have won a lottery or prize of some kind. If the older adult wants to claim their winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send their bank account information to receive the alleged winnings.<sup>17</sup>
- **Computer tech support scams**, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user their device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand they pay a fee to have it repaired.<sup>18</sup>
- **"Grandparent" scams**, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure their trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).<sup>19</sup>

In 2022, there were 88,262 complaints of fraud from people aged 60 years or older, resulting in \$3.1 billion in losses.<sup>20</sup> This was an 82.35 percent increase in losses compared to 2021.<sup>21</sup> Financial scams are devastating to many older adults and can leave them in a vulnerable position, with limited ability to recover their losses.<sup>22</sup>

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<sup>12</sup> National Council on Aging, *Get the Facts on Elder Abuse*, <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited Jan. 10, 2024).

<sup>13</sup> Consumer Financial Protection Bureau, *Reporting Elder Financial Abuse*, <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/reporting-elder-financial-abuse-guide/> (last visited Jan. 10, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Department of Justice: Office of Victims of Crime, *National Elder Fraud Hotline*, <https://ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope#financial-scams-and-abuses-that-target-older-people-are-happenin> (last visited Jan. 29, 2024).

<sup>16</sup> National Council on Aging, *supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Internet Crime Report*, [https://www.ic3.gov/Media/PDF/AnnualReport/2022\\_IC3Report.pdf](https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf) (last visited Jan. 10, 2024). See also, National Council on Aging, *supra* note 12.

<sup>21</sup> *Id.*

<sup>22</sup> National Council on Aging, *supra* note 12.

## Regulation of Financial Institutions in Florida

The Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission (Commission)<sup>23</sup> relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>24</sup> OFR has four divisions: the Division of Consumer Finance, the Division of Financial Institutions, the Division of Securities, and the Bureau of Financial Investigations.<sup>25</sup>

Florida law broadly defines the term “financial institution” as 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.<sup>26</sup>

Banks and credit unions in the United States are chartered and regulated under a dual banking system.<sup>27</sup> These institutions may elect to have a national charter and a federal primary regulator, or they may choose to be chartered and regulated by the state in which they are headquartered.<sup>28</sup> OFR’s Division of Financial Institutions:

- Conducts periodic risk-based examinations and ensures that each state-chartered financial institution meets state and federal requirements for safety and soundness;<sup>29</sup> and
- Administers Florida’s financial institutions codes,<sup>30</sup> which apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to such institutions.<sup>31</sup>

Under Florida law, the books and records of a financial institution are confidential and shall be made available for inspection and examination under certain circumstances, including:

- To OFR or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- With respect to an international banking corporation or international trust entity, to the home-country supervisor of the international banking corporation or international trust entity, provided certain conditions are met;
- As compelled by legislative subpoena as provided by law;
- As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to certain rules,<sup>32</sup> or pursuant to a subpoena issued in accordance with state or federal law;<sup>33</sup>

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<sup>23</sup> OFR is housed within the Financial Services Commission (Commission). The Commission is comprised of four members: the Governor, Attorney General, Chief Financial Officer, and the Commissioner of Agriculture. See Office of Financial Regulation, *Financial Services Commission*, <https://flofr.gov/sitepages/financialservicescommission.htm> (last visited Jan. 26, 2024).

<sup>24</sup> S. 20.121(3)(a)2., F.S.

<sup>25</sup> Office of Financial Regulation, *Our Agency Divisions*, <https://flofr.gov/default.htm> (last visited Jan. 26, 2024).

<sup>26</sup> S. 655.005(1)(i), F.S.

<sup>27</sup> Office of Financial Regulation, *Agency Analysis of 2024 House Bill 515*, p. 2 (Jan. 4, 2025).

<sup>28</sup> *Id.*

<sup>29</sup> Office of Financial Regulation, *Division of Financial Institutions: What We Do*, <https://flofr.gov/sitePages/DivisionOfFinancialInstitutions.htm> (last visited Jan. 26, 2024).

<sup>30</sup> Chs. 655-667, F.S.

<sup>31</sup> Ss. 655.001(1) and 655.012(1), F.S.

<sup>32</sup> Specifically, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure. See s. 655.059(1)(e), F.S.

<sup>33</sup> Before the production of the books and records of a financial institution under these circumstances, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the

- Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;
- As authorized pursuant to the board of directors of the financial institution; and
- As otherwise provided by law.<sup>34</sup>

A person who willfully violates the provisions of Florida law described above relating to unlawful disclosure of confidential information is guilty of a felony of the third degree, punishable as provided by Florida's criminal laws.<sup>35</sup>

## **Effect of the Bill**

The bill amends the Act to increase consumer protections related to fraudulent financial transactions.

The bill defines "specified adult" as a natural person 65 years of age or older, or a vulnerable adult as defined in current law. "Trusted contact" is defined as a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about either the account or the account owner to address possible financial exploitation or to confirm the specifics of the account owner's current contact information or health status; to determine the identity of any conservator, executor, trustee, or individual or entity granted a power of attorney; or to address any other concern reasonably related to the administration of the account.

The bill authorizes a financial institution, which reports suspected financial exploitation of a specified adult, to delay a disbursement or transaction from an account of specified adult or an account for which the specified adult is a beneficiary or beneficial owner, provided certain conditions are met. This applies to a suspicion that the transaction may be a wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property, or any act or omission, including the use of a power of attorney, guardianship, or conservatorship, to:

- Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
- Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.

When the financial institution takes this action, it must notify in writing all parties authorized to transact business on the account and any trusted contact. The financial institution must also create and maintain for at least five years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes certain information.

A delay on a disbursement or transaction expires 15 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 30 additional business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. However, a financial institution is not prevented from terminating a delay after communicating with the parties authorized to transact business on the account and any trusted contact on the account.

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production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement.

<sup>34</sup> S. 655.059(1), F.S. See s. 655.059(2) for a list of other persons that are authorized by Florida law to inspect the books and records of a financial institution.

<sup>35</sup> S. 655.059(1)(c), F.S. The specific provisions of Florida's criminal laws under which a person may be punished for a violation includes ss. 755.802, 755.083, and 755.084, F.S.

A financial institution that acts in good faith and exercises reasonable care to comply with the bill's provisions is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with the bill's provisions. However, this grant of immunity does not supersede or diminish any immunity granted elsewhere in the Act.

The bill also requires financial institutions to develop certain trainings and policies to educate employees who perform or approve transactions on behalf of customers on issues pertaining to financial exploitation of specified adults before placing a delay on any disbursement or transaction. Specifically, a financial institution must:

- Conduct training for all employees described above as soon as reasonably practicable and maintain a written record of all trainings conducted;<sup>36</sup> and
- Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

The bill provides that, absent a reasonable belief of financial exploitation, a financial institution's obligations to parties authorized to transact business on an account or any trusted contact named on such account are not otherwise altered. Further, the bill does not create new rights for or impose new obligations or new duties on financial institutions under other applicable laws.

The bill also provides legislative intent.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill has an indeterminate positive impact on account holders to the extent any fraudulent transactions are prevented.

The bill has an indeterminate negative administrative impact on financial institutions to the extent that such institutions decide to delay disbursements as provided by the bill. Further, if the financial

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<sup>36</sup> The bill provides that, with respect to an individual who begins employment with a covered financial institution after July 1, 2024, such training must be conducted within 1 year after the date on which the individual becomes employed by or affiliated with the covered financial institution.

institution does decide to delay disbursements, the institution must first comply with the conditions provided by the bill.

D. FISCAL COMMENTS:

None.