

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fletcher	Lloyd
2) Health & Human Services Committee	19 Y, 0 N, As CS	Guzzo	Calamas
3) Commerce Committee			

SUMMARY ANALYSIS

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. Common types of elder abuse include neglect, physical abuse, psychological abuse, and financial abuse. 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 an adult individual to then delay a disbursement or transaction from an account of the individual or an account for which the individual 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.

Finally, the bill 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.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 2019¹ to 80.8 million by 2040.² Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.³ In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population.⁴ 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.⁵

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.⁶ 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.⁷

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.⁸ In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older.⁹

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.¹⁰ Common types of elderly abuse include neglect, physical abuse, psychological abuse, and financial abuse.¹¹ 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.¹²

¹ 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).

² 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 (last visited Jan. 10, 2024).

³ *Id.*

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

⁵ 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 (last visited Jan. 10, 2024).

⁶ S. 415.102(28), F.S.

⁷ S. 415.101(2), F.S.

⁸ *Id.*

⁹ 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.

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

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

¹² 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).

Financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.¹³ 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.¹⁴

FINANCIAL SCAMS

Fraudulent scams that target elderly individuals are on the rise.¹⁵ 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.¹⁶
- **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.¹⁷
- **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.¹⁸
- **"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).¹⁹

In 2022, there were 88,262 complaints of fraud from people aged 60 years or older, resulting in \$3.1 billion in losses.²⁰ This was a 82.35 percent increase in losses compared to 2021.²¹ Financial scams are devastating to many older adults and can leave them in a vulnerable position, with limited ability to recover their losses.²²

¹³ 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).

¹⁴ *Id.*

¹⁵ 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).

¹⁶ National Council on Aging, *supra* note 12.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

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

²¹ *Id.*

²² 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)²³ relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.²⁴ OFR has four divisions: the Division of Consumer Finance, the Division of Financial Institutions, the Division of Securities, and the Bureau of Financial Investigations.²⁵

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.²⁶

Banks and credit unions in the United States are chartered and regulated under a dual banking system.²⁷ 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.²⁸ 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;²⁹ and
- Administers Florida’s financial institutions codes,³⁰ which apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to such institutions.³¹

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,³² or pursuant to a subpoena issued in accordance with state or federal law;³³
- Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;

²³ 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).

²⁴ S. 20.121(3)(a)2., F.S.

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

²⁶ S. 655.005(1)(i), F.S.

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

²⁸ *Id.*

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

³⁰ Chs. 655-667, F.S.

³¹ Ss. 655.001(1) and 655.012(1), F.S.

³² 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.

³³ 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 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.

- As authorized pursuant to the board of directors of the financial institution; and
- As otherwise provided by law.³⁴

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.³⁵

Effect of the Bill

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

The bill authorizes a financial institution, which reports suspected financial exploitation of an adult individual, to delay a disbursement or transaction from an account of the individual or an account for which the individual 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, which is a natural person the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account. 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 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar 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.

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 on financial institutions under other applicable laws.

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. Specifically, a financial institution must:

- Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conduct training for all employees at least annually and maintain a written record of all trainings conducted; and

³⁴ 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.

³⁵ 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.

- 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 an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 415.10341, F.S., relating to protection of specified adults.

Section 2: Provides an effective date of July 1, 2024.

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes:

- Changed the definition of a “specified adult” to mean a natural person 70 years of age or older, rather than 65 years of age or older;
- Provided that a delay on a disbursement or transaction expires 5 business days after date on which the delay was first placed, rather than 15 business days;
- Allowed a financial institution to extend a delay for up to 7 additional calendar days under certain circumstances, rather than 10 additional business days; and
- Removed the proposed grant of administrative and civil immunity to a financial institution based on certain circumstances.

On February 22, 2024, the Health & Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Made the protections from financial exploitation in the bill applicable to all adults instead of limiting them to just vulnerable adults and people 70 years of age or older.
- Removed the legislative intent language.
- Removed the requirement for financial institutions to share certain information with DCF, any law enforcement agency, or any state or federal agency with regulatory authority over the financial institution.

The analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.