

1 HB207
2 204481-2
3 By Representatives Blackshear, Whitt and Coleman
4 RFD: Financial Services
5 First Read: 11-FEB-20

SYNOPSIS: This bill would allow a financial institution to refuse or delay a financial transaction on an account of an elderly or vulnerable adult, on an account on which an elderly or vulnerable adult is a beneficiary, or on an account of a person suspected of perpetrating financial exploitation when a financial institution has reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted.

 This bill would also allow a financial institution to offer to an elderly or vulnerable adult the opportunity to submit and periodically update a list of persons that may be contacted when the financial institution has reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted.

A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to the protection of elderly and vulnerable
5 adults; to allow a financial institution to refuse or delay a
6 financial transaction when the financial institution has
7 reasonable cause to suspect that financial exploitation may
8 have occurred, may have been attempted, or is being attempted;
9 to allow a financial institution to offer to an elderly or
10 vulnerable adult the opportunity to submit and periodically
11 update a list of persons that may be contacted when the
12 financial institution has reasonable cause to suspect that
13 financial exploitation may have occurred or been attempted;
14 and to provide immunity to a financial institution or an
15 officer or employee of a financial institution for certain
16 actions taken.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the Elderly and Vulnerable Adult Financial Protection Act
20 of 2020.

21 Section 2. The Legislature finds that instances of
22 financial exploitation are on the rise in Alabama and
23 elsewhere, particularly among elderly and vulnerable adults.
24 The Legislature recognizes that while financial institutions
25 are uniquely positioned to potentially uncover instances of
26 financial exploitation, they are also subject to duties
27 imposed by contract and law to conduct financial transactions

1 in accordance with their customers' instructions. While all
2 instances of financial exploitation cannot be exposed,
3 delayed, or thwarted, it is the intent of the Legislature that
4 this act furnish financial institutions with additional tools
5 to protect elderly and vulnerable adults from financial
6 exploitation.

7 Section 3. As used in this act, unless the context
8 requires otherwise, the following terms have the following
9 meanings:

10 (1) ACCOUNT. Funds or assets held by a financial
11 service provider, including, but not limited to, a deposit
12 account, checking account, money market account, savings
13 account, share account, certificate of deposit, trust account,
14 individual retirement account or other type of retirement
15 account, guardianship or conservatorship account, investment
16 or securities account, loan, credit card, or any extension of
17 credit, including a home equity line of credit.

18 (2) ELDERLY ADULT. An individual 65 years of age or
19 older.

20 (3) FINANCIAL EXPLOITATION. Any of the following:

21 a. The wrongful or unauthorized taking, withholding,
22 appropriation, or use of money, assets, or property of an
23 elderly or vulnerable adult, including incurring debt in the
24 name of an elderly or vulnerable adult for the benefit of a
25 third party.

26 b. Any act or omission taken by a person, including
27 through the use of a power of attorney, guardianship, or

1 conservatorship of an elderly or vulnerable adult, to either
2 of the following:

3 1. Obtain control through deception, intimidation,
4 or undue influence over the elderly or vulnerable adult's
5 money, assets, or property to deprive the elderly or
6 vulnerable adult of the ownership, use, benefit, or possession
7 of his or her money, assets, or property.

8 2. Convert money, assets, or property of the elderly
9 or vulnerable adult to deprive the elderly or vulnerable adult
10 of the ownership, use, benefit, or possession of his or her
11 money, assets, or property.

12 (4) FINANCIAL SERVICE PROVIDER. Any entity,
13 including its employees and officers, regulated by the Alabama
14 Credit Union Administration or the State Banking Department,
15 or similar federal regulatory agency, engaged in or
16 transacting business in this state, including, but not limited
17 to, a state or national bank or trust company; a state or
18 federal savings and loan association; a state or federal
19 credit union; an industrial loan and thrift company; a
20 mortgage loan lender, broker, originator, or servicer; a title
21 pledge lender; a deferred presentment services provider; a
22 pawnbroker; or a small loan lender.

23 (5) FINANCIAL TRANSACTION. Any of the following:

24 a. A transfer or request to transfer or disburse
25 funds or assets in an account.

1 b. A request to initiate a wire transfer, initiate
2 an automated clearing house transfer, or issue a money order,
3 cashier's check, or official check.

4 c. A request to negotiate a check or other
5 negotiable instrument.

6 d. A request to change the ownership of an account.

7 e. A request for a loan, extension of credit, or
8 draw on a line of credit.

9 f. A request to transfer the title to any real
10 property or the title of any motor vehicle or mobile home, or
11 to encumber such real property, motor vehicle, or mobile home.

12 (6) LAW ENFORCEMENT AGENCY. Any municipal, county,
13 state, or federal agency the personnel of which have the power
14 to arrest and to perform law enforcement functions, including
15 prosecutorial entities.

16 (7) VULNERABLE ADULT. An individual 18 years of age
17 or older who, because of mental or physical impairment, is
18 unable to fully manage the his or her own resources, carry out
19 all or a portion of the activities of daily living, or is
20 unable to fully protect against neglect, exploitation, or
21 hazardous or abusive situations without assistance from
22 others.

23 Section 4. (a) (1) If a financial service provider
24 has reasonable cause to suspect that financial exploitation
25 may have occurred, may have been attempted, or is being
26 attempted, the financial service provider may, but is not
27 required to, refuse or delay the execution of a financial

1 transaction on an account of an elderly or vulnerable adult;
2 on an account on which the elderly or vulnerable adult is a
3 beneficiary, including a trust, guardianship, or
4 conservatorship account; or on an account of a person
5 suspected of perpetrating the financial exploitation.

6 (2) A financial service provider may also refuse or
7 delay the execution of a financial transaction under this
8 section if the Department of Human Resources or a law
9 enforcement agency provides information to the financial
10 service provider demonstrating that it is reasonable to
11 believe that financial exploitation may have occurred, may
12 have been attempted, or is being attempted.

13 (b) Except as ordered by a court, a financial
14 service provider is not required to refuse or delay the
15 execution of a financial transaction under this section and
16 may use its discretion to determine whether to refuse or delay
17 the execution of a financial transaction based on the
18 information available to the financial service provider.

19 (c) A financial service provider that refuses to
20 execute a financial transaction or places a hold on a
21 financial transaction based on reasonable cause to suspect
22 that financial exploitation may have occurred, may have been
23 attempted, or is being attempted shall do both of the
24 following:

25 (1) Except with regard to an account administered by
26 a bank or trust company in a fiduciary capacity, make a

1 reasonable effort to notify one or more parties authorized to
2 transact business on the account orally or in writing.

3 (2) If the incident involves financial exploitation,
4 report the incident to the Department of Human Resources and
5 the appropriate law enforcement agency.

6 (d) Notwithstanding subsection (c), notice to any
7 party authorized to conduct business on the account is not
8 required if the party is the suspected perpetrator of
9 financial exploitation.

10 (e) A refusal by a financial service provider to
11 execute a financial transaction or place a hold on a financial
12 transaction as authorized by this section, based on the
13 financial service provider's reasonable cause to suspect that
14 financial exploitation may have occurred, may have been
15 attempted, or is being attempted, expires when the financial
16 service provider reasonably believes that the financial
17 transaction will not result in financial exploitation unless
18 earlier terminated by an order of a court of competent
19 jurisdiction.

20 (f) A financial service provider or an officer or
21 employee of a financial service provider, acting in a
22 reasonable manner, is immune from all criminal, civil, and
23 administrative liability for the following:

24 (1) Refusing or not refusing to execute a financial
25 transaction, or holding or not holding a financial transaction
26 under this section.

1 (2) Actions taken in furtherance of the
2 determination made under subdivision (1) if the determination
3 was based upon a reasonable belief.

4 Section 5. (a) A financial service provider may
5 offer to a customer who is an elderly or vulnerable adult the
6 opportunity to submit and periodically update a list of
7 individuals or entities that the elderly or vulnerable adult
8 authorizes the financial service provider to contact when the
9 financial service provider has reasonable cause to suspect
10 that the elderly or vulnerable adult is a victim or a target
11 of financial exploitation.

12 (b) A financial service provider that has reasonable
13 cause to suspect that an elderly or vulnerable adult is the
14 victim or target of financial exploitation may convey the
15 suspicion to one or more of the following, provided that the
16 person is not the suspected perpetrator:

17 (1) An individual or entity on the list described in
18 subsection (a), if a list has been provided by the elderly or
19 vulnerable adult to the financial service provider.

20 (2) A co-owner, additional authorized signatory, or
21 beneficiary on the elderly or vulnerable adult's account at
22 the financial institution.

23 (3) A third party reasonably associated with the
24 elderly or vulnerable adult.

25 (c) When providing information under this section, a
26 financial service provider may limit the information and
27 disclose only that the financial service provider has

1 reasonable cause to suspect that the elderly or vulnerable
2 adult may be a victim or target of financial exploitation
3 without disclosing any other details or confidential personal
4 information regarding the financial affairs of the elderly or
5 vulnerable adult.

6 (d) A financial service provider may choose not to
7 contact one or more individuals or entities on the list
8 provided pursuant to subsection (a) if the financial service
9 provider suspects that the person or persons are engaged in
10 financial exploitation.

11 (e) A financial service provider may rely on
12 information provided by the customer in compiling a list of
13 contact persons.

14 (f) A financial service provider or an officer or
15 employee of a financial service provider, acting in a
16 reasonable manner, is immune from all criminal, civil, and
17 administrative liability for contacting a person or electing
18 not to contact a person under this section and for actions
19 taken in furtherance of that determination.

20 (g) Any contact or disclosure of information made
21 pursuant to this section is exempt from any applicable state
22 customer consent and customer notice statutes or regulations.

23 Section 6. (a) All laws or parts of laws which
24 conflict with this act are repealed. Notwithstanding the
25 previous sentence, nothing in this act shall be construed as
26 altering or amending Article 7 commencing with Section
27 8-6-170, of Chapter 6 of Title 8, Code of Alabama 1975, the

1 Protection of Vulnerable Adults from Financial Exploitation
2 Act, which relates to broker-dealers and investment advisors
3 protecting vulnerable adults from financial exploitation.

4 (b) Nothing in this act shall be construed as
5 altering or amending a contract, including a deposit
6 agreement, to which a financial service provider is a party.

7 Section 7. This act shall become effective January
8 1, 2021, following its passage and approval by the Governor,
9 or its otherwise becoming law.