

1 HB147
2 208702-1
3 By Representative Blackshear
4 RFD: Financial Services
5 First Read: 02-FEB-21
6 PFD: 01/26/2021

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 2021.

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 his or her own resources, carry out all
19 or a portion of the activities of daily living, or is unable
20 to fully protect against neglect, exploitation, or hazardous
21 or abusive situations without assistance from others.

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

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

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

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

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

24 (1) Except with regard to an account administered by
25 a bank or trust company in a fiduciary capacity, make a
26 reasonable effort to notify one or more parties authorized to
27 transact business on the account orally or in writing.

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

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

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

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

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

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

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

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

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

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

20 (3) A third party reasonably associated with the
21 elderly or vulnerable adult.

22 (c) When providing information under this section, a
23 financial service provider may limit the information and
24 disclose only that the financial service provider has
25 reasonable cause to suspect that the elderly or vulnerable
26 adult may be a victim or target of financial exploitation
27 without disclosing any other details or confidential personal

1 information regarding the financial affairs of the elderly or
2 vulnerable adult.

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

8 (e) A financial service provider may rely on
9 information provided by the customer in compiling a list of
10 contact persons.

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

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

20 Section 6. (a) All laws or parts of laws which
21 conflict with this act are repealed. Notwithstanding the
22 previous sentence, nothing in this act shall be construed as
23 altering or amending Article 7 commencing with Section
24 8-6-170, of Chapter 6 of Title 8, Code of Alabama 1975, the
25 Protection of Vulnerable Adults from Financial Exploitation
26 Act, which relates to broker-dealers and investment advisors
27 protecting vulnerable adults from financial exploitation.

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

4 Section 7. This act shall become effective January
5 1, 2022, following its passage and approval by the Governor,
6 or its otherwise becoming law.