

1 SB181
2 208702-2
3 By Senators Shelnutt and Livingston
4 RFD: Banking and Insurance
5 First Read: 03-FEB-21

1 SB181

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4 ENROLLED, An Act,

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall be known and may be cited
20 as the Elderly and Vulnerable Adult Financial Protection Act
21 of 2021.

22 Section 2. The Legislature finds that instances of
23 financial exploitation are on the rise in Alabama and
24 elsewhere, particularly among elderly and vulnerable adults.
25 The Legislature recognizes that while financial institutions

1 are uniquely positioned to potentially uncover instances of
2 financial exploitation, they are also subject to duties
3 imposed by contract and law to conduct financial transactions
4 in accordance with their customers' instructions. While all
5 instances of financial exploitation cannot be exposed,
6 delayed, or thwarted, it is the intent of the Legislature that
7 this act furnish financial institutions with additional tools
8 to protect elderly and vulnerable adults from financial
9 exploitation.

10 Section 3. As used in this act, unless the context
11 requires otherwise, the following terms have the following
12 meanings:

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

21 (2) ELDERLY ADULT. An individual 65 years of age or
22 older.

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

24 a. The wrongful or unauthorized taking, withholding,
25 appropriation, or use of money, assets, or property of an

1 elderly or vulnerable adult, including incurring debt in the
2 name of an elderly or vulnerable adult for the benefit of a
3 third party.

4 b. Any act or omission taken by a person, including
5 through the use of a power of attorney, guardianship, or
6 conservatorship of an elderly or vulnerable adult, to either
7 of the following:

8 1. Obtain control through deception, intimidation,
9 or undue influence over the elderly or vulnerable adult's
10 money, assets, or property to deprive the elderly or
11 vulnerable adult of the ownership, use, benefit, or possession
12 of his or her money, assets, or property.

13 2. Convert money, assets, or property of the elderly
14 or vulnerable adult to deprive the elderly or vulnerable adult
15 of the ownership, use, benefit, or possession of his or her
16 money, assets, or property.

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

1 pledge lender; a deferred presentment services provider; a
2 pawnbroker; or a small loan lender.

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

4 a. A transfer or request to transfer or disburse
5 funds or assets in an account.

6 b. A request to initiate a wire transfer, initiate
7 an automated clearing house transfer, or issue a money order,
8 cashier's check, or official check.

9 c. A request to negotiate a check or other
10 negotiable instrument.

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

12 e. A request for a loan, extension of credit, or
13 draw on a line of credit.

14 f. A request to transfer the title to any real
15 property or the title of any motor vehicle or mobile home, or
16 to encumber such real property, motor vehicle, or mobile home.

17 (6) LAW ENFORCEMENT AGENCY. Any municipal, county,
18 state, or federal agency the personnel of which have the power
19 to arrest and to perform law enforcement functions, including
20 prosecutorial entities.

21 (7) VULNERABLE ADULT. An individual 18 years of age
22 or older who, because of mental or physical impairment, is
23 unable to fully manage his or her own resources, carry out all
24 or a portion of the activities of daily living, or is unable

1 to fully protect against neglect, exploitation, or hazardous
2 or abusive situations without assistance from others.

3 Section 4. (a) (1) If a financial service provider
4 has reasonable cause to suspect that financial exploitation
5 may have occurred, may have been attempted, or is being
6 attempted, the financial service provider may, but is not
7 required to, refuse or delay the execution of a financial
8 transaction on an account of an elderly or vulnerable adult;
9 on an account on which the elderly or vulnerable adult is a
10 beneficiary, including a trust, guardianship, or
11 conservatorship account; or on an account of a person
12 suspected of perpetrating the financial exploitation.

13 (2) A financial service provider may also refuse or
14 delay the execution of a financial transaction under this
15 section if the Department of Human Resources or a law
16 enforcement agency provides information to the financial
17 service provider demonstrating that it is reasonable to
18 believe that financial exploitation may have occurred, may
19 have been attempted, or is being attempted.

20 (b) Except as ordered by a court, a financial
21 service provider is not required to refuse or delay the
22 execution of a financial transaction under this section and
23 may use its discretion to determine whether to refuse or delay
24 the execution of a financial transaction based on the
25 information available to the financial service provider.

1 (c) A financial service provider that refuses to
2 execute a financial transaction or places a hold on a
3 financial transaction based on reasonable cause to suspect
4 that financial exploitation may have occurred, may have been
5 attempted, or is being attempted shall do both of the
6 following:

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

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

14 (d) Notwithstanding subsection (c), notice to any
15 party authorized to conduct business on the account is not
16 required if the party is the suspected perpetrator of
17 financial exploitation.

18 (e) A refusal by a financial service provider to
19 execute a financial transaction or place a hold on a financial
20 transaction as authorized by this section, based on the
21 financial service provider's reasonable cause to suspect that
22 financial exploitation may have occurred, may have been
23 attempted, or is being attempted, expires when the financial
24 service provider reasonably believes that the financial
25 transaction will not result in financial exploitation unless

1 earlier terminated by an order of a court of competent
2 jurisdiction.

3 (f) A financial service provider or an officer or
4 employee of a financial service provider, acting in a
5 reasonable manner, is immune from all criminal, civil, and
6 administrative liability for the following:

7 (1) Refusing or not refusing to execute a financial
8 transaction, or holding or not holding a financial transaction
9 under this section.

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

13 Section 5. (a) A financial service provider may
14 offer to a customer who is an elderly or vulnerable adult the
15 opportunity to submit and periodically update a list of
16 individuals or entities that the elderly or vulnerable adult
17 authorizes the financial service provider to contact when the
18 financial service provider has reasonable cause to suspect
19 that the elderly or vulnerable adult is a victim or a target
20 of financial exploitation.

21 (b) A financial service provider that has reasonable
22 cause to suspect that an elderly or vulnerable adult is the
23 victim or target of financial exploitation may convey the
24 suspicion to one or more of the following, provided that the
25 person is not the suspected perpetrator:

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

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

7 (3) A third party reasonably associated with the
8 elderly or vulnerable adult.

9 (c) When providing information under this section, a
10 financial service provider may limit the information and
11 disclose only that the financial service provider has
12 reasonable cause to suspect that the elderly or vulnerable
13 adult may be a victim or target of financial exploitation
14 without disclosing any other details or confidential personal
15 information regarding the financial affairs of the elderly or
16 vulnerable adult.

17 (d) A financial service provider may choose not to
18 contact one or more individuals or entities on the list
19 provided pursuant to subsection (a) if the financial service
20 provider suspects that the person or persons are engaged in
21 financial exploitation.

22 (e) A financial service provider may rely on
23 information provided by the customer in compiling a list of
24 contact persons.

1 (f) A financial service provider or an officer or
2 employee of a financial service provider, acting in a
3 reasonable manner, is immune from all criminal, civil, and
4 administrative liability for contacting a person or electing
5 not to contact a person under this section and for actions
6 taken in furtherance of that determination.

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

10 Section 6. (a) All laws or parts of laws which
11 conflict with this act are repealed. Notwithstanding the
12 previous sentence, nothing in this act shall be construed as
13 altering or amending Article 7 commencing with Section
14 8-6-170, of Chapter 6 of Title 8, Code of Alabama 1975, the
15 Protection of Vulnerable Adults from Financial Exploitation
16 Act, which relates to broker-dealers and investment advisors
17 protecting vulnerable adults from financial exploitation.

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

21 Section 7. This act shall become effective January
22 1, 2022, following its passage and approval by the Governor,
23 or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB181

Senate 11-FEB-21

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 25-FEB-21

By: Senator Shelnutt