

2016 Regular Session

HOUSE BILL NO. 668

BY REPRESENTATIVE CARMODY

FINANCIAL INSTITUTIONS: Provides for the protection of vulnerable adults from financial exploitation

1 AN ACT

2 To enact Part XIV of Subchapter A of Chapter 3 of Title 6 of the Louisiana Revised Statutes  
3 of 1950, to be comprised of R.S. 6:341 through 346, relative to the regulation of  
4 financial institutions; to provide for definitions; to provide for governmental and  
5 third party disclosures; to regulate delays of disbursements; to regulate access to  
6 records; to provide for immunity; to provide for effectiveness; and to provide for  
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part XIV of Subchapter A of Chapter 3 of Title 6 of the Louisiana Revised  
10 Statutes of 1950, comprised of R.S. 6:341 through 346, is hereby enacted to read as follows:

11 PART XIV. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL  
12 EXPLOITATION

13 §341. Definitions

14 As used in this Part, the following terms and phrases have the meanings  
15 hereinafter ascribed to them:

16 (1) "Adult protection agency" has the same meaning as defined in R.S.  
17 15:1503.

18 (2) "Commissioner" means the commissioner of financial institutions.

19 (3) "Covered agency" means any of the following:

20 (a) A state or federal financial institution regulatory authority.

1           (b) Any law enforcement agency.

2           (c) The adult protective services agency of a state.

3           (4) "Covered financial institution" means any bank, credit union, savings  
4 bank, savings and loan association, or trust company.

5           (5) "Eligible adult" means any of the following:

6           (a) Any person sixty years of age or older.

7           (b) Any person subject to the Adult Protective Services Act as defined in R.S.  
8 15:1503.

9           (6) "Financial exploitation" means any of the following:

10          (a) The wrongful or unauthorized taking, withholding, appropriation, or use  
11 of money, assets, or property of an eligible adult.

12          (b) Any act or omission taken by a person including but not limited to the use  
13 of a power of attorney, guardianship, or conservatorship of an eligible adult for any  
14 of the following purposes:

15           (i) Obtaining control over or depriving the eligible adult of his ownership,  
16 use, benefit, or possession of his money, assets, or property by deception,  
17 intimidation, or undue influence.

18           (ii) Converting the money, assets, or property of the eligible adult.

19          §342. Governmental disclosures

20           A covered financial institution may notify adult protective services and the  
21 commissioner if the covered financial institution reasonably believes that the  
22 financial exploitation of an eligible adult is being attempted, may have been  
23 attempted, or may have occurred.

24          §343. Third party disclosures

25           A. A covered financial institution may notify any third party previously  
26 designated by the eligible adult if the covered financial institution reasonably  
27 believes that the financial exploitation of an eligible adult is being attempted, may  
28 have been attempted, or may have occurred.

1           B. A disclosure shall not be made to any third party previously designated by  
2           the eligible adult who is suspected of financial exploitation or any other abuse of the  
3           eligible adult.

4           §344. Delaying disbursements; regulations

5           A. A covered financial institution may delay a disbursement from an account  
6           of an eligible adult or an account on which an eligible adult is a beneficiary when it  
7           meets the following requirements:

8                   (1) The covered financial institution has initiated an internal review of a  
9                   disbursement request and reasonably finds that the requested disbursement will result  
10                  in financial exploitation of an eligible adult.

11                  (2) The covered financial institution immediately, but in no later than two  
12                  business days after the requested disbursement, provides written notification of the  
13                  delay and the reason for the delay to the following:

14                          (a) All parties authorized to transact business on the account, unless any such  
15                          party is reasonably believed to have engaged in suspected or attempted financial  
16                          exploitation of the eligible adult.

17                          (b) The adult protective services and the commissioner.

18                          (3) The covered financial institution continues its internal review of the  
19                          suspected or attempted financial exploitation of the eligible adult as necessary and,  
20                          in no later than seven business days after the requested disbursement, reports the  
21                          results of the internal review to the adult protective services and the commissioner.

22           B. Any delay of a disbursement as authorized pursuant to this Section shall  
23           expire or be terminated when the earliest of any of the following circumstances  
24           occur:

25                          (1) The covered financial institution reasonably determines that the  
26                          disbursement will not result in financial exploitation of the eligible adult.

27                          (2) Fifteen days pass from the date on which the covered financial institution  
28                          first initiated the delay of the disbursement, unless any of the following occur:

1           (a) The commissioner or adult protective services requests the covered  
2           financial institution to extend the delay, in which case the delay shall expire or be  
3           terminated no later than twenty-five business days from the date on which the  
4           covered financial institution first initiated the delay of the disbursement.

5           (b) A court of competent jurisdiction renders in open court or signs any order  
6           whereby the court orders the covered financial institution to do any of the following:

7                   (i) Execute the requested disbursement.

8                   (ii) Extend the delay of the disbursement.

9                   (iii) Perform any duty necessary to accomplish any other protective relief  
10           based on the petition of the commissioner, adult protective services, covered  
11           financial institution, or other interested party.

12           §345. Records

13                   A.(1) A covered financial institution may provide access to or copies of  
14           records that are relevant to the suspected or attempted financial exploitation of an  
15           eligible adult to a covered agency either as part of a referral to the covered agency  
16           or upon request of a covered agency pursuant to an investigation.

17                   (2) The records may include historical records as well as any records relating  
18           to the most recent transaction or transactions that may comprise financial  
19           exploitation of an eligible adult.

20                   B. All records made available pursuant to this Section shall be kept strictly  
21           confidential and are not a public record as defined by R.S. 44:1, et seq.

22                   C. Nothing in this Part shall limit or otherwise impede the authority of the  
23           commissioner to access or examine books and records of a covered financial  
24           institution as otherwise provided by law.

25           §346. Immunity; receipt of notice and indemnity

26                   A. A covered financial institution acting in good faith and exercising  
27           reasonable care that makes a disclosure of information pursuant to this Section shall  
28           be immune from administrative or civil liability that may otherwise arise from the  
29           disclosure or for any failure to notify the customer of the disclosure.

1           B. No claim may be brought against the commissioner, adult protective  
2           services, the office of financial institutions, or the state of Louisiana in connection  
3           with the receipt of or response to any notice of financial exploitation.

4           Section 2. This Act shall become effective upon signature by the governor or, if not  
5 signed by the governor, upon expiration of the time for bills to become law without signature  
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
8 effective on the day following such approval.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 668 Original

2016 Regular Session

Carmody

**Abstract:** Provides for the protection of vulnerable adults from financial exploitation and regulates the ability of covered financial institutions to delay disbursements of certain funds.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification.

Proposed law authorizes a covered financial institution to notify adult protective services and the commissioner of the office of financial institutions ("OFI") if the covered financial institution reasonably believes that the financial exploitation of an eligible adult is being attempted, may have been attempted, or may have occurred.

Proposed law authorizes a covered financial institution to notify any third party previously designated by the eligible adult if the covered financial institution reasonably believes that the financial exploitation of an eligible adult is being attempted, may have been attempted, or may have occurred. Proposed law clarifies with an exception that a disclosure shall not be made to any third party previously designated by the eligible adult who is suspected of financial exploitation or any other abuse of the eligible adult.

Proposed law authorizes a covered financial institution to delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary when it meets the following requirements enumerated by proposed law:

- (1) The covered financial institution has initiated an internal review of a disbursement request and reasonably finds that the requested disbursement will result in financial exploitation of an eligible adult.
- (2) The covered financial institution immediately, but in no later than 2 business days after the requested disbursement, provides written notification of the delay and the reason for the delay to the following persons:

(a) All parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult.

(b) The adult protective services and the commissioner of OFI.

(3) The covered financial institution continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary and, in no later than 7 business days after the requested disbursement, reports the results of the internal review to the adult protective services and the commissioner of OFI.

Proposed law requires that any delay of a disbursement as authorized by proposed law shall expire or be terminated when the earliest of any of the following circumstances occur:

(1) The covered financial institution reasonably determines that the disbursement will not result in financial exploitation of the eligible adult.

(2) 15 days pass from the date on which the covered financial institution first initiated the delay of the disbursement, unless any of the following occur:

(a) The commissioner of OFI or adult protective services requests the covered financial institution to extend the delay, in which case the delay shall expire or be terminated no later than 25 business days from the date on which the covered financial institution first initiated the delay of the disbursement.

(b) A court of competent jurisdiction renders in open court or signs any order whereby the court orders the covered financial institution to do any of the following:

(i) Execute the requested disbursement.

(ii) Extend the delay of the disbursement.

(iii) Perform any duty necessary to accomplish any other protective relief based on the petition of the commissioner, adult protective services, covered financial institution, or other interested party.

Proposed law authorizes a covered financial institution to provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to a covered agency, as defined in proposed law, either as part of a referral to the covered agency or upon request of a covered agency pursuant to an investigation. Proposed law clarifies that the records may include historical records as well as any records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult.

Proposed law provides that any record made available pursuant to proposed law shall be kept strictly confidential and is not a public record as defined by present law (R.S. 44:1, et seq.).

Proposed law clarifies that nothing in proposed law shall limit or otherwise impede the authority of the commissioner of OFI to access or examine books and records of a covered financial institution as otherwise provided by present law.

Proposed law provides that a covered financial institution acting in good faith and exercising reasonable care that makes a disclosure of information pursuant to proposed law shall be immune from administrative or civil liability that may otherwise arise from the disclosure or for any failure to notify the customer of the disclosure. Proposed law further clarifies that no claim may be brought against the commissioner of OFI, OFI, adult protective services, or the state of La. in connection with the receipt of or response to any notice of financial exploitation.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 6:341-346)