

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 amend and reenact R.S. 44:4.1(B)(2) and to enact R.S. 6:333(F)(19) and Part XIV of
3 Subchapter A of Chapter 3 of Title 6 of the Louisiana Revised Statutes of 1950, to
4 be comprised of R.S. 6:341 through 345, relative to the regulation of financial
5 institutions; to authorize certain disclosures; to provide for definitions; to provide for
6 governmental and third party disclosures; to regulate access to records; to provide
7 for immunity; to provide for effectiveness; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 6:333(F)(19) and Part XIV of Subchapter A of Chapter 3 of Title 6
10 of the Louisiana Revised Statutes of 1950, comprised of R.S. 6:341 through 345, are hereby
11 enacted to read as follows:

12 §333. Disclosure of financial records; reimbursement of costs

13 * * *

14 F. The following disclosures by a bank or any affiliate are hereby
15 specifically authorized and, except as otherwise provided in this Subsection, nothing
16 in this Section shall prohibit, restrict, or otherwise apply to:

17 * * *

18 (19) The disclosure by a bank or any affiliate of information or financial
19 records pursuant to R.S. 6:341 et seq.

20 * * *

1 PART XIV. PROTECTION OF VULNERABLE ADULTS FROM
2 FINANCIAL EXPLOITATION

3 §341. Definitions

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

6 (1) "Adult protection agency" has the same meaning as defined in R.S.
7 15:1503.

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

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

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

11 (b) Any federal, state, or local law enforcement agency.

12 (c) The adult protection agency.

13 (4) "Covered financial institution" means any bank, credit union, savings
14 bank, or savings and loan association operating in Louisiana.

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

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

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

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

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

22 (b) Any act or omission committed by a person including but not limited to
23 the use of a power of attorney, act of procuration, contract of mandate, or letters of
24 curatorship of an eligible adult for any of the following purposes:

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

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

1 §342. Governmental disclosures

2 A covered financial institution may notify a covered agency if the covered
3 financial institution believes that the financial exploitation of an eligible adult is
4 being attempted, may have been attempted, or may have occurred.

5 §343. Third party disclosures

6 A. A covered financial institution may notify any third party previously
7 designated, in writing, by the eligible adult if the covered financial institution
8 believes that the financial exploitation of an eligible adult is being attempted, may
9 have been attempted, or may have occurred.

10 B. A disclosure shall not be made to any third party previously designated,
11 in writing, by the eligible adult who is suspected of financial exploitation of the
12 eligible adult.

13 §344. Records

14 A.(1) A covered financial institution may provide access to or copies of
15 records, pursuant to R.S. 6:333, that are relevant to the suspected or attempted
16 financial exploitation of an eligible adult to a covered agency either as part of a
17 referral to the covered agency or upon request of a covered agency pursuant to an
18 investigation.

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

22 B. All records made available pursuant to this Section shall be kept strictly
23 confidential by the covered agency and are not a public record as defined by R.S.
24 44:1 et seq.

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

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 a covered agency if the covered financial institution 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, in writing, by the eligible adult if the covered financial institution 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, in writing, by the eligible adult who is suspected of financial exploitation of the eligible adult.

Proposed law authorizes a covered financial institution to provide access to or copies of records, pursuant to proposed law, 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 by the covered agency 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 no covered financial institution, or any of its directors, officers, employees, attorneys, accountants, or other agents, shall be civilly or criminally liable to any person, including any customer, for any act or failure to act pursuant to proposed law, and nothing in proposed law shall be construed to create any duty or mandate imposed on a covered financial institution.

Present law enumerates a list of recognized exceptions, exemptions, and limitations to the laws pertaining to public records. Proposed law amends present law to include reference to proposed law.

Effective January 1, 2017.

(Amends 44:4.1(B)(2); Adds R.S. 6:333(F)(19) and 341-345)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Make technical changes.
2. Modify certain defined terms and clarify references to those terms.
3. Add the disclosures made pursuant to proposed law to an enumerated list of authorized disclosures made by banks or banking affiliates.
4. Remove a standard of reasonableness in certain disclosures made by covered financial institutions to either covered agencies or to designated third parties.

5. Require that any designation of a third party by an eligible adult must be made in writing.
6. Delete a reference to "any other abuse" relative to limiting disclosures made to previously designated third parties who are suspected of financial exploitation of the eligible adult.
7. Delete all provisions relative to regulations imposed on the delay of certain disbursements.
8. Modify immunity provisions regarding any act or failure to act pursuant to the provisions of proposed law relative to certain financial disclosures.
9. Provide reference for an exemption to public records laws.
10. Modify the effective date.