Bank Transactions and the Exploitation of Vulnerable Adults
SC Department of Consumer Affairs - Elder Fraud Prevention & Response Convening and Training

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Banks have always had the ability and duty to combat fraud.

But does a bank slow or stop potentially fraudulent transactions that it has an obligation to timely handle?

How does the bank stop the fraud presently occurring without being liable for denying the transaction?

SCBA researched what other states were doing and briefed Sen. Alexander.

In December 2019 Rep. Norrell introduces H4806 – similar bill. But the session was shortened due to COVID.


Additionally, LPL Financial and the Attorney General’s office proposed a version addressing securities fraud

Senate Family and Veteran Affairs Committee and House LCI committee vetted the bill.

The Governor signed the bill on May 18, 2021 and it was effective immediately
Basic Provisions of S425

Allows a bank or broker-dealer to decline or place on hold a transaction if financial exploitation is suspected to the extent that the bank feels that the transaction needs to be slowed or stopped.

Requires the bank to release the transaction as soon it finds that there is no exploitation, but no later than 30 days, or if a court orders. It can be expanded up to 55 days if law enforcement requests that the hold continue.

Provides the bank and broker-dealer immunity from liability from holding the transaction if the bank acts on good faith and its decision is based on the evidence it has at the time.

- Present vulnerable adult statutes already grant the same immunity from liability for reporting to APS or law enforcement

Banks are required to report these actions to APS.

S425 is similar to legislation that at least 20 states have adopted

Important to remember there are two parts to the legislation – one for regular bank transactions and one for transactions involving securities.
Definitions and Premise

Section 43-35-87. (A) For the purposes of this section, 'financial institution' means any bank, credit union, wealth management institution, or other financial services company. This section excludes a 'broker-dealer' as defined in Section 35-1-102(4) and an 'investment adviser' as defined in Section 35-1-102(15).

(B) If a financial institution reasonably believes that the financial exploitation of a vulnerable adult has occurred or may occur, then the financial institution may, but is not required to, decline or place on hold any transaction involving:

1. the account of the vulnerable adult;
2. an account in which the vulnerable adult is a beneficiary, including a trust or guardianship account; or
3. the account of a person who is suspected of engaging in the financial exploitation of the vulnerable adult.
Information from Law Enforcement; Discretion of Financial Institution

C) A financial institution may also decline or place on hold any transaction pursuant to this section if an investigative entity or law enforcement agency provides information to the financial institution demonstrating that it is reasonable to believe that the financial exploitation of a vulnerable adult has occurred or may occur.

(D) A financial institution is not required to decline or place on hold a transaction pursuant to this section. Such a decision is in the financial institution's discretion, based on the information available to the financial institution.
Duties of Bank; Deadlines to Release Transaction

(E)(1) Any financial institution that declines or places on hold a transaction pursuant to this section shall:

(a) make a reasonable effort to provide notice, orally or in writing, to all parties authorized to transact business on the account from which the transfer or disbursement was declined or placed on hold; and

(b) report the incident to the appropriate investigative entity in accordance with Section 43-35-25.

(F) Any decline or hold of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the financial institution that allowing the transaction will not result in the financial exploitation of a vulnerable adult;

(2) thirty business days after the date on which the financial institution first declined or placed on hold the transaction, unless an appropriate investigative entity as set forth in Section 43-35-10(5) requests that the financial institution extend the delay, in which case the delay shall expire no more than fifty-five business days after the date on which the financial institution first declined or placed on hold the transaction; or

(3) the order of a court of competent jurisdiction.
Cooperation with Law Enforcement; Liability Standards

(G) A financial institution may provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to law enforcement agencies or investigative entities responsible for administering the provisions of this article. Such records may include relevant historical records and recent transactions relating to suspected financial exploitation.

(H) If the determinations and actions of a financial institution or an employee of a financial institution are made in good faith and in accordance with the provisions of this section, then the financial institution or employee shall be immune from criminal, civil, or administrative liability for declining transactions to disburse monies pursuant to this section, and for taking actions in furtherance of a determination, including making a report or providing access to or copies of relevant records to an investigative entity or law enforcement agency. Nothing in this section is intended to nor does it limit or shield in any manner a financial institution from civil liability against any claim, including reasonable attorneys' fees, costs, and litigation expenses, for participating in or materially aiding the financial exploitation of a vulnerable adult. Any such claims shall be asserted by the vulnerable adult, or on his behalf by an appropriate guardian or representative who is not involved in or otherwise suspected of participating in the financial exploitation of the vulnerable adult, by filing a civil action in circuit court."
S425 - Conclusion

S425 is simply another tool for private parties such as banks, broker-dealers, investment advisors, and others to use to help combat financial exploitation of vulnerable adults.

SCBA efforts to educate bankers include webinars, conferences and sharing training materials.

Legislation can be found at [www.scstatehouse.gov](http://www.scstatehouse.gov)

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