



New Law Aimed at Deterring **FINANCIAL EXPLOITATION**

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The Consumer Financial Protection Bureau estimates that each year more than \$37 billion is lost due to financial abuse by scammers of the elderly and people with disabilities. In Arkansas, the number of cases involving financial scams exploiting vulnerable adults has quadrupled in the last three years.

To combat this growing problem, State Representative Carlton Wing (R-North Little Rock) assembled a task force to draft a bill designed to further protect vulnerable adults from falling victim to financial scams in Arkansas. Together, the committee drafted House Bill 1391 or the Safeguarding Against Financial Exploitation of Retirees for Arkansas, **The SAFER AR Act**.

“While scams to defraud retirees, elderly and people with disabilities has been growing exponentially, only about 1 in 24 cases are reported to the authorities,” said Lorrie Trogden, president of the Arkansas Bankers Association.

In addition to expanding the existing Arkansas Deceptive Trade Practices Act, which protects consumers from financially exploitative practices, a key component to HB 1391 is the authority it provides financial institutions to recognize, delay and report financial exploitation of senior citizens and people with disabilities. Under HB 1391, financial institutions can report a suspected violation to the Department of Human Services for referral to the Consumer Protection Division of the state Attorney General’s office, or directly to state or local law enforcement authorities, including the Attorney General’s office.

“The SAFER AR Act provides banks and other financial institutions an improved reporting mechanism to state and local authorities when they suspect financial abuse

of the elderly and people with disabilities,” said Steve Wade, EVP & assistant general counsel at Simmons Bank who worked on the task force from beginning to end. “By encouraging financial institutions to act in circumstances of suspected fraud, this bill should help prevent financial loss to victims and give authorities an earlier start toward investigation and prosecution of perpetrators.”

The bill also adds a provision focused on holding intermediaries who facilitate the completion of fraud, “knowingly facilitating, assisting, intermediating, or in any way aiding the operation or continuance of an act or practice” liable.

Here is a list of frequently asked questions and answers for bankers and associates of financial institutions:

Q. WHEN DOES THE SAFER AR ACT BECOME A LAW?

A. The bill was signed into law by Governor Asa Hutchinson on April 29, 2021 and will be effective on Thursday, July 1, 2021.



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Q. HOW DOES THE SAFER AR ACT IMPACT BANKERS AND PROTECT CUSTOMERS?

A. The new legislation provides banks and banking operations the authority to take action to stop a suspected financial exploitation (or to not to take such action) if that appears to be the most reasonable decision based on the facts and circumstances involved, without incurring civil or criminal liability.

Q. WHAT TYPES OF ACCOUNTS ARE COVERED UNDER THE NEW LAW AND WHAT TYPES OF FINANCIAL TRANSACTIONS SHOULD BANKERS MONITOR?

A. The types of accounts covered by the bill include: all deposit, checking and savings accounts, CD's, money market accounts, trust accounts, IRAs, investment accounts, loans and lines of credit and credit cards.

The following transaction types are covered:

- Opening a new account
- Expanding access to an account by adding online or telephone banking, or by adding an additional person authorized to conduct transactions in the account
- Funds transfers, including internal transfers within the bank and external transfers by wire, ACH, check, Cashier's check or "official" check
- Cashing or otherwise negotiating a check or other negotiable instrument
- Changing the ownership of an account
- A loan or other credit request, or an advance on a previously established loan or line of credit
- Transferring real property or a titled vehicle, or pledging such property as collateral

Other financial exploitations covered under the bill are:

- Wrongful or unauthorized taking, misappropriation, or use of the person's money, assets or property including incurring debt in the person's name
- Obtaining control of the person's money, assets, or property through deception, intimidation or undue influence, including misuse of a power of attorney to do so

Q. WHAT STEPS SHOULD BANKERS TAKE TO PROTECT CUSTOMERS WHO ARE SUSPECTED VICTIMS OF FINANCIAL EXPLOITATION?

A. If the bank has reasonable cause to believe that financial exploitation may have occurred or is being attempted, it may refuse or delay the execution of a financial transaction on an account of which the elder or disabled person is an owner or a beneficiary, or if the suspected perpetrator is an owner of the account.

The bank may take such action to inform the Attorney General's office by calling 800-482-8982 and leaving a voicemail. A member of the Attorney General's Office monitors the voicemails and routes the messages to the appropriate, available person. If the customer needs help recovering stolen funds, please call the Attorney General's office immediately.

For bankers who are aware of an incident involving exploitation, report it to Adult Protective Services Unit of the Department of Human Services (DHS). DHS will report it to the Attorney General's Office within 48 hours.

Except for cases involving a court order, the bank is not required to refuse or delay a transaction and may use its discretion to determine whether to do so based on available information.

To streamline communications, the Attorney General's Office has asked for each bank to provide at least one contact who is familiar with HB 1391 and the Attorney General's role and authority with respect to financial exploitation and scams. The Attorney General's Office will use the contact as a point-person for notification of alleged exploitation or victimization. Questions regarding referrals and the banker's contact, with title, email, and direct dial, may be sent to Shannon Halijan at Shannon.Halijan@ArkansasAG.gov.

Q. ONCE A SUSPECTED VIOLATION HAS BEEN FILED, HOW SHOULD BANKERS COMMUNICATE WITH THE CUSTOMER?

A. If the bank refuses to execute or delays a financial transaction based on reasonable cause to suspect financial exploitation or attempted exploitation, the bank may make

EVERY MONTH



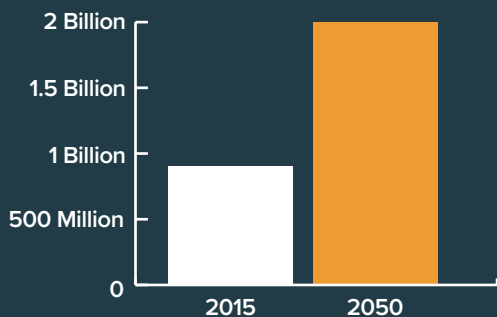
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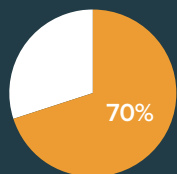
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THE TRUE FIGURES ARE
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PEOPLE AGED 60 AND OLDER



By 2050, the global population of people aged 60 and older is predicted to more than double, from 900 million in 2015 to about 2 billion.

PEOPLE OVER 50 YEARS OLD



CONTROL
OVER 70%
OF THE NATION'S WEALTH

FRAUDSTERS ARE USING NEW TACTICS TO TAKE ADVANTAGE OF RETIRING BABY BOOMERS AND THE GROWING NUMBER OF OLDER AMERICANS

EACH YEAR

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According to the Consumer Financial Protection Bureau

an effort to notify one or more parties authorized to transact business on the subject account, and report the incident to DHS.

If the incident is reported to DHS, the bank may make a reasonable effort to notify a third party “reasonably associated” with the elder or disabled person (such as a family member), regardless of whether the third party is authorized to conduct business on the subject account.

The bank may elect not to report the incident to another party, whether authorized on the account or “reasonably associated” with the potential victim, if that party is the suspected perpetrator.

Q. ARE BANKERS HELD LIABLE FOR REPORTING OR NOT REPORTING THE FRAUDULENT ACTIVITY?

A. The bank, or any officer, director, employee, agent, or other representative of the bank, acting in a reasonable manner, is immune from any civil, criminal, or administrative liability for refusing or not refusing to execute a financial transaction covered by the bill if such action was based upon reasonable belief.

Q. IF MY BANK FILED A SUSPICIOUS ACTIVITY REPORT (SAR), ARE BANKERS ALLOWED TO SHARE THE DETAILS OF THE SAR WITH THE ATTORNEY GENERAL'S OFFICE, A STATE AGENCY, OR A LAW ENFORCEMENT AGENCY?

A. A bank that files a Suspicious Activity Report (SAR) under Federal law regarding a suspected financial exploitation covered by the bill may also report the facts of the incident which led to a SAR being filed to local or state law enforcement, including the Attorney General.

The information reported in a SAR may be shared with law enforcement, but the existence and/or filing of the SAR may not. A bank which reports such information to law enforcement is immune from any civil or criminal liability.

Q. ARE OTHER FINANCIAL INSTITUTIONS COVERED UNDER THE SAFER AR ACT?

A. Yes, in addition to banks, other financial institutions which are covered by the bill are trust companies, thrift stores, credit unions, mortgage companies and pawnbrokers.

Special thanks to those that contributed to or participated on the task force who developed the bill including, Representative Carlton Wing; representatives from the office of state Attorney General Leslie Rutledge; Susannah Marshall, Arkansas Banking Commissioner; Eric Munson, Arkansas Securities Commissioner and members of his team; Lorrie Trogden, Arkansas Bankers Association president and CEO; Simmons Bank associates, Steve Wade, EVP and assistant general counsel, Sharmaine Hines, SVP and director of fair and responsible banking and Barbara Peck, SVP and compliance & BSA/AML officer; Lindsey Bell, in-house legal staff at First Security Bank; and the Federal Bureau of Investigation. ■