

H.385 – Possible Amendment Concerning Bank Holds for Suspicious Activity

Sec. 1. 8 V.S.A. chapter 200, subchapter 8 is added to read:

Subchapter 8. Protection From Financial Exploitation

§ 10801. FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) A covered entity has a duty imposed by law and contract to conduct customer-directed transactions in a timely manner and in accordance with a customer's instructions.

10 (2) Customers are increasingly being induced to authorize transactions
11 that are not in their best interests.

(b) It is the intent of the General Assembly to:

13 (1) ensure customers have ready access to their funds; and

14 (2) provide a covered entity with the tools and protections to intervene

15 in a customer-directed transaction when the covered entity reasonably believes

16 the transaction presents potential significant risk of harm to the customer.

17 (c) It is not the intent of the General Assembly to impose a duty on a
18 covered entity to contravene the valid instructions of a customer and nothing in
19 this chapter creates such a duty.

§ 10802. DEFINITIONS

As used in this subchapter:

1 (1) “Account” means any deposit, share, custodial, trust, or transaction
2 account, whether held individually or jointly, and whether checking, savings,
3 money market, certificate of deposit, prepaid, or similar, that is established,
4 maintained, or administered by a covered entity, through which the covered
5 entity accepts, holds, disburses, or transfers funds of a customer. The term
6 includes accounts held for the benefit of another, including fiduciary,
7 guardianship, conservatorship, power of attorney, and representative payee
8 accounts, to the extent the account is maintained by a covered entity.

9 (2) “Associated third party” means:

10 (A) a parent, spouse, adult child, sibling, or other family member of a
11 customer whom a covered entity reasonably believes is closely associated with
12 the customer;

13 (B) an individual the customer has authorized to be contacted by the
14 customer’s covered entity;

15 (C) a co-owner, additional authorized signatory, or beneficiary on a
16 customer’s account or an agent for the customer under a power of attorney; or

17 (D) a licensed attorney, trustee, conservator, guardian, or other
18 fiduciary selected by a court or governmental agency to manage some or all of
19 the financial affairs of the customer.

20 (3) “Covered entity” means a bank, trust company, or savings institution
21 as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A.

1 § 30101(5). The term also includes the subsidiaries and affiliates that provide
2 financial services for such entity, as well as the directors, officers, employees,
3 or agents of such entity.

4 (4) “Customer” means any person who establishes, maintains, or is a
5 beneficiary of an account with a covered entity, including any person who
6 owns, controls, or has a present or contingent legal or beneficial interest in
7 funds held in the account, whether acting directly or through an agency,
8 fiduciary, or representative.

9 (5) “Financial exploitation” means:

10 (A) the wrongful or unauthorized taking, withholding, appropriation,
11 transfer, expenditure, or use of a customer’s money, assets, or property; or

12 (B) any act or omission by a person, including by a fiduciary or other
13 representative of the customer, whether acting under a power of attorney,
14 guardianship, conservatorship, trust, or similar authority that:

15 (i) obtains or attempts to obtain control over the customer’s
16 money, assets, or property through deception, intimidation, coercion, or undue
17 influence, for the purpose or effect of depriving the customer of the ownership,
18 use, benefit, or possession of the customer’s money, assets, or property; or

19 (ii) converts or misuses the customer’s money, assets, or property
20 so as to deprive the customer of the ownership, use, benefit, or possession of
21 the customer’s money, assets, or property.

1 § 10803. PROTECTIVE ACCOUNT ACTION

2 (a) If a covered entity reasonably believes that a customer is or has been the
3 victim of financial exploitation or attempted financial exploitation, and such
4 belief is based on information either individually observed or received from a
5 State, local, or law enforcement agency, the covered entity may take one or
6 more of the following measures to protect a customer's account:

7 (1) delay or refuse one or more transactions with or involving the
8 customer;

9 (2) delay or refuse to permit the withdrawal or disbursement of funds
10 contained in the customer's account;

11 (3) prevent a change in ownership of the customer's account;

12 (4) prevent a transfer of funds from the customer's account to an
13 account owned wholly or partially by another person;

14 (5) refuse to comply with instructions given to the covered entity by an
15 agent or person acting for or with an agent under a power of attorney signed or
16 purported to have been signed by the customer; or

17 (6) prevent or change the designation of the beneficiaries to receive any
18 property, benefit, or contract rights for the customer.

19 (b) A covered entity is not required to take protective action under this
20 section with regard to a customer's account but may use its sole discretion to

1 determine whether taking such action is warranted based on the information
2 available to it at the time.

3 (c)(1) The authority to delay a transaction under this section expires at the
4 earlier of:

5 (A) 15 business days after the date on which the covered entity
6 initiated the delay;

7 (B) when the covered entity is satisfied within its sole discretion that
8 the transaction will not likely result in financial exploitation; or

9 (C) upon a court order directing the release of funds.

10 (2) Unless otherwise directed by a court order, the covered entity may
11 extend the duration of the delay for up to an additional 15 days based on a
12 reasonable belief that the financial exploitation or attempted financial
13 exploitation of the customer may continue.

14 (d) Any refusal, delay, or other protective action taken by a covered entity
15 in good faith under this section to prevent the financial exploitation of a
16 customer shall:

17 (1) not constitute wrongful dishonor under section 4-402 of Title 9A;
18 (2) constitute reasonable grounds under the federal Check Clearing for
19 the 21st Century Act, 12 U.S.C. § 5001 et seq., the Expedited Funds
20 Availability Act, 12 U.S.C. § 4001 et seq., or related regulations, without
21 imposing a duty to review every deposit or check individually; and

1 (3) not constitute a violation of Article 4A of Title 9A (fund transfers) or
2 related funds transfer laws, and any delayed payment order is deemed received
3 only when the hold is removed, and the covered entity submits the order for
4 processing.

5 § 10804. ASSOCIATED THIRD PARTY; NOTIFICATIONS

6 (a) A covered entity may notify an associated third party, if any, if it
7 reasonably believes that the financial exploitation or attempted financial
8 exploitation of a customer is or has occurred and such disclosure is in the best
9 interests of the customer.

10 (b) A covered entity may choose not to notify an associated third party if it
11 reasonably believes that the third party is, was, or may be engaged in the
12 financial exploitation or attempted financial exploitation of the customer.

13 (c) A covered entity shall limit disclosures to an associated third party to
14 only information necessary to convey its suspicion that the customer was or
15 may be the victim or intended victim of financial exploitation.

16 (d) Any disclosure by a covered entity pursuant to this section is exempt
17 from the financial privacy protections specified under subchapter 2 of this
18 chapter and, to the extent permitted by federal law, under the Gramm-Leach-
19 Bliley Act, 15 U.S.C. 6801 et seq., as those laws may be amended.

20 § 10805. IMMUNITY

1 When carrying out protective actions authorized by this subchapter, a
2 covered entity shall be protected from civil, criminal, and administrative
3 liability for any act or omission within the scope of its duties and authorized by
4 this subchapter, provided the act or omission is in good faith and does not
5 amount to gross negligence or willful misconduct.

6 § 10806. CONSTRUCTION

7 This subchapter shall be liberally construed to encourage covered entities to
8 take reasonable protective actions to prevent the financial exploitation of their
9 customers.

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect upon passage.