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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Swearingen and A. White

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### SUMMARY

- Requires depository institutions to develop and enforce procedures for reporting suspected financial exploitation of eligible adults (60+ years old; or a person eligible to receive adult protective services under current law).
- Defines “depository institution” as a bank, savings bank, savings and loan association, or credit union that is subject to regulation or supervision by the U.S. or any state, including employees of such institutions.
- Defines “financial exploitation” as either: (1) the wrongful or unauthorized taking or use of an eligible adult’s money, assets, or property, or (2) any act or omission by a person to obtain control of an eligible adult’s money, assets, or property through deception, intimidation, or undue influence, or to deprive the eligible adult of the use of such money, assets, or property.
- Allows depository institutions to place a temporary hold of up to 15 days on transactions thought to be impacted by financial exploitation, which could be extended under certain circumstances.
- Requires depository institutions to report such transactional hold immediately to the applicable county department of job and family services.
- Prescribes procedures for seeking a temporary protection order against an unascertainable person.

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## DETAILED ANALYSIS

### Financial exploitation of eligible adults

#### Transactional holds

The bill regulates how a depository institution (a bank, savings bank, savings and loan association, or credit union, or an employee of any of the foregoing, that is subject to regulation or supervision by the federal government or any state) interacts with eligible adults (at least 60 years old; or is a person that is eligible to receive adult protective services under continuing law, unchanged by the bill, regarding physical or mental impairments) in cases of financial exploitation. Under the bill, if a depository institution has reasonable cause to believe an eligible adult account holder is impacted by past, current, or attempted financial exploitation, then two things must occur:

- First, the bill requires the institution to follow any internal written policy, program, plan, or procedure adopted by the institution for the purpose of establishing protocols for the reporting of past, current, or attempted financial exploitation.
- Second, the bill allows an institution to place a hold of up to 15 business days on any affected transaction, which may be extended or terminated at any time by the Division of Financial Institutions (DFI), the county department of jobs and family services (county JFS), or a court of competent jurisdiction. The institution may also extend a hold past the initial 15 days at the request of an investigating federal or state agency, or if, within the initial 15-day hold period, the institution has not heard from either DFI or the county JFS that the depository institution must report the transaction to (see “**Notice and reports**” below).

The bill explicitly states that none of its provisions can be construed to limit an institution’s ability to seek injunctive relief from a court of competent jurisdiction at any time for any past, current, or attempted financial exploitation.

The bill defines “financial exploitation” as either:

- The wrongful or unauthorized taking, withholding, directing, appropriation, or use of money, assets, or property of an eligible adult;
- Any act or omission by a person, including the use of a power of attorney or guardianship of an eligible adult, to either:
  - Obtain control, through deception, intimidation, or undue influence of money, assets, or property of an eligible adult and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the money, assets, or property;

- Convert money, assets, or property of an eligible adult and thereby depriving the eligible adult of the ownership, use, benefit, or possession of the money, assets, or property.<sup>1</sup>

### **Transactional hold reports**

The bill requires a depository institution to immediately provide a written report of each transactional hold, along with a summary of the facts and circumstances leading to the hold (which may be reported via electronic means), to DFI and to the county JFS for the county where the eligible adult resides.<sup>2</sup>

### **Voluntary notice**

The bill permits a depository institution to, within three days of placing a transactional hold, provide written or electronic notice regarding the hold to all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account.

Under the bill, “trusted contact” means a natural person 18 years or older that the account owner has expressly identified and recorded in an institution’s books and records as someone who can be contacted about the account or the account owner to address possible financial exploitation or to confirm the specifics of:

- The account owner’s current contact information or health status;
- The identity of any conservator, executor, trustee, or individual or entity granted a power of attorney;
- Any other concern reasonably related to the administration of the account.

A joint account owner or an individual or entity who was been granted a power of attorney can also be a “trusted contact.”

The bill, however, expressly prohibits an institution from notifying any party it reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the eligible adult.<sup>3</sup>

### **Five-year recordkeeping requirement**

The bill requires any record of a transactional hold made pursuant to the bill’s provisions, any transactional hold report, and any voluntary notification of the hold to be maintained by the depository institution for not less than five years.<sup>4</sup>

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<sup>1</sup> R.C. 1349.13(A), (C), and (D), and 1349.14(A), (C), and (D); R.C. 5101.60 to 5101.71, not in the bill.

<sup>2</sup> R.C. 1349.14(B).

<sup>3</sup> R.C. 1349.13(F) and 1349.141.

<sup>4</sup> R.C. 1349.142.

## **Written procedures and voluntary training**

The bill requires a depository institute, prior to placing a transactional hold pursuant to the bill's provisions, to:

- Develop, maintain, and enforce written procedures regarding the way suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel;
- Conduct training as soon as reasonably practicable to educate employees who perform or approve transactions on behalf of customers on issues pertaining to financial exploitation, if such training is developed, which the bill allows but does not require; if performed, the institution must maintain a written record of all training conducted. For an individual who begins employment with an institution after the bill's effective date, such training (if developed) must be conducted within one year after the date the individual becomes employed by, or affiliated or associated with, the institution.<sup>5</sup>

## **Immunity from liability**

The bill provides that a person who, in good faith, makes a report or places a transactional hold pursuant to the bill's provisions is immune from any civil or administrative liability arising from the report or hold. Additionally, a person is immune from civil or administrative liability arising from failing to place a transactional hold, provided the person attempts in good faith to comply with the bill's requirements.<sup>6</sup>

## **DFI rulemaking**

The bill requires the Superintendent of DFI to adopt rules to implement the bill's provisions regarding transactional holds for suspected or known financial exploitation.<sup>7</sup>

## **Temporary protection orders**

The bill authorizes a county JFS, its designee, a county prosecutor, an adult, or a person empowered to act as a power of attorney under continuing law, unchanged by the bill, to petition for a temporary protection order (TPO) against, or to stop a proposed transfer of, an adult's funds or property to, an unascertainable person. The bill defines an "unascertainable person" as a person whose identity cannot be determined or is unknown, and who has communicated with an adult through any means that make tracing the person's identity impractical.

Ohio's Adult Protective Services law defines an "adult" as any person 60 years of age or older within Ohio who is disabled by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person's own care or protection, and who resides in an independent living arrangement.

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<sup>5</sup> R.C. 1349.15.

<sup>6</sup> R.C. 1349.151.

<sup>7</sup> R.C. 1349.152.

## **Affidavit requirement**

In filing for a TPO or to stop a transfer, the bill requires a petitioner to file with the court a sworn affidavit that includes:

- The facts leading the petitioner to believe that the person is an unascertainable person, and that a proposed or initiated transfer of funds or property by the adult is a response to a fraudulent request by the unascertainable person;
- Information regarding how the unascertainable person and the adult have been in contact;
- All identifying information that is known to the petitioner or the adult, including, for example, pseudonyms, tax identification number, email addresses, or social media usernames and handles;
- A description of the petitioner's attempts to identify the unascertainable person, including using the same method of communication that the unascertainable person used to communicate with the adult.

## **Substitute service**

If a court determines that a person is an unascertainable person based on the affidavit described above, the bill mandates that the court order the petitioner to serve the unascertainable person through the same means of communication that the unascertainable person used to communicate with the adult within two days of the order. The petitioner must file with the court proof, including a sworn affidavit with screenshots, that the petitioner has attempted to serve the unascertainable person in accordance with the court's order, which constitutes substitute service on the unascertainable person.

## **Property holds**

If a TPO or stop to a transfer is ordered, and substitute service, as described above, was used, the bill requires that the proposed transfer of funds or property in dispute be held for 30 days, beginning on the date of the order, prior to such funds or property being distributed for the benefit of the adult.

## **Bill construction**

The bill expressly states that the provisions regarding TPOs must be construed in such a way as to best operate for the benefit and protection of an adult in need of protective services.<sup>8</sup>

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<sup>8</sup> R.C. 5101.703; R.C. 5101.60(C), 5101.701, and 5101.702, not in the bill.

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## HISTORY

Action	Date
Introduced	10-28-25

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