**South Carolina General Assembly**

124th Session, 2021-2022

**A84, R103, S425**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Alexander, McLeod, Young and Gustafson

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Introduced in the Senate on January 12, 2021

Introduced in the House on April 8, 2021

Last Amended on May 12, 2021

Passed by the General Assembly on May 12, 2021

Governor's Action: May 18, 2021, Signed

Summary: Adult protection, investigations

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 307](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Family and Veterans' Services** ([Senate Journal‑page 307](file:///h:\sj\20210112.docx))

3/10/2021 Senate Committee report: Favorable with amendment **Family and Veterans' Services** ([Senate Journal‑page 8](file:///h:\sj\20210310.docx))

3/31/2021 Senate Committee Amendment Adopted ([Senate Journal‑page 42](file:///h:\sj\20210331.docx))

3/31/2021 Senate Amended ([Senate Journal‑page 42](file:///h:\sj\20210331.docx))

3/31/2021 Senate Read second time ([Senate Journal‑page 42](file:///h:\sj\20210331.docx))

3/31/2021 Senate Roll call Ayes‑43 Nays‑0 ([Senate Journal‑page 42](file:///h:\sj\20210331.docx))

4/7/2021 Senate Read third time and sent to House ([Senate Journal‑page 25](file:///h:\sj\20210407.docx))

4/8/2021 House Introduced and read first time ([House Journal‑page 29](file:///h:\hj\20210408.docx))

4/8/2021 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 29](file:///h:\hj\20210408.docx))

4/29/2021 House Committee report: Favorable with amendment **Labor, Commerce and Industry**

5/3/2021 Scrivener's error corrected

5/4/2021 House Amended ([House Journal‑page 90](file:///h:\hj\20210504.docx))

5/4/2021 House Read second time ([House Journal‑page 90](file:///h:\hj\20210504.docx))

5/4/2021 House Roll call Yeas‑97 Nays‑0 ([House Journal‑page 91](file:///h:\hj\20210504.docx))

5/5/2021 House Read third time and returned to Senate with amendments ([House Journal‑page 8](file:///h:\hj\20210505.docx))

5/6/2021 Senate House amendment amended ([Senate Journal‑page 61](file:///h:\sj\20210506.docx))

5/6/2021 Senate Roll call Ayes‑45 Nays‑0 ([Senate Journal‑page 61](file:///h:\sj\20210506.docx))

5/6/2021 Senate Returned to House with amendments ([Senate Journal‑page 61](file:///h:\sj\20210506.docx))

5/12/2021 House Non‑concurrence in Senate amendment ([House Journal‑page 72](file:///h:\hj\20210512.docx))

5/12/2021 House Roll call Yeas‑0 Nays‑110 ([House Journal‑page 72](file:///h:\hj\20210512.docx))

5/12/2021 Senate Senate recedes from amendment(s) ([Senate Journal‑page 9](file:///h:\sj\20210512.docx))

5/13/2021 House Ordered enrolled for ratification ([House Journal‑page 34](file:///h:\hj\20210513.docx))

5/18/2021 Ratified R 103

5/18/2021 Signed By Governor

6/1/2021 Effective date 05/18/21

6/1/2021 Act No.  84

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**VERSIONS OF THIS BILL**

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[3/10/2021](file:///p:\pprever\2021-22\425_20210310.docx)

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(A84, R103, S425)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 43‑35‑87 SO AS TO AUTHORIZE FINANCIAL INSTITUTIONS TO DECLINE CERTAIN TRANSACTION REQUESTS IN CASES OF THE SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; BY ADDING ARTICLE 8 TO CHAPTER 1, TITLE 35 SO AS TO AUTHORIZE FINANCIAL REPRESENTATIVES OF CERTAIN CLIENTS, INCLUDING VULNERABLE ADULTS, TO NOTIFY THE DEPARTMENT OF SOCIAL SERVICES AND THE OFFICE OF THE ATTORNEY GENERAL IN THE EVENT OF A SUSPECTED FINANCIAL EXPLOITATION, TO PROVIDE CERTAIN PROTECTIONS FOR GOOD FAITH REPORTING, AND FOR OTHER PURPOSES; AND TO AMEND SECTION 35‑1‑607, RELATING TO PUBLIC RECORDS OF THE OFFICE OF THE ATTORNEY GENERAL’S SECURITIES DIVISION, SO AS TO ADD CERTAIN RECORDS PROVIDED TO THE DIVISION REGARDING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Financial exploitation, financial institution authority to decline transaction requests**

SECTION 1. Article 1, Chapter 35, Title 43 of the 1976 Code is amended by adding:

“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.

(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.

(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.

(2) Notwithstanding the provisions of this subsection, a financial institution has no duty to notify any party that is suspected of financial exploitation pursuant to this section.

(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.

(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.”

**Protection of vulnerable adults from financial exploitation**

SECTION 2. Chapter 1, Title 35 of the 1976 Code is amended by adding:

“Article 8

The Protection of Vulnerable Adults from Financial Exploitation

Section 35‑1‑800. In this article, unless the context otherwise requires:

(1) ‘Agencies’ means the Adult Protective Services Program in the Department of Social Services and the Securities Division of the Office of the Attorney General.

(2) ‘Eligible adult’ means:

(a) a person fifty‑five years of age or older; or

(b) a vulnerable adult subject to Section 43‑35‑10(11).

# (3) ‘Financial exploitation’ means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or property of an eligible adult; or

(b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) obtain the control, use, or benefit, through deception, intimidation, or undue influence, or by the use of any scheme, device, or artifice to defraud, of the eligible adult’s money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of his money, assets, or property; or

(ii) convert the money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of his money, assets, or property.

(4) ‘Qualified individual’ means any agent, broker‑dealer, investment adviser representative, investment adviser, or person who serves in a supervisory, compliance, or legal capacity for a broker‑dealer or investment adviser.

(5) ‘Reasonably associated individual’ means any person known to a qualified individual to be reasonably associated with an eligible adult or his account.

Section 35‑1‑810. If a qualified individual reasonably believes that the financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, then the qualified individual may promptly notify the agencies.

Section 35‑1‑820. A qualified individual who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to Section 35‑1‑810 shall be immune from any administrative or civil liability that might otherwise arise from such a disclosure or from the failure to notify an eligible adult of such a disclosure.

Section 35‑1‑830. If a qualified individual reasonably believes that the financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, then the qualified individual may notify any third party previously designated by the eligible adult or, if such a person has not been designated or cannot be contacted, a reasonably associated individual. Disclosure may not be made to any designated third party that is suspected of the financial exploitation or other abuse of the eligible adult.

Section 35‑1‑840. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35‑1‑830 shall be immune from any administrative or civil liability that might otherwise arise from such a disclosure.

Section 35‑1‑850. (A) A broker‑dealer or investment adviser may delay a disbursement from, or a transaction in connection with, an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker‑dealer, the investment adviser, or a qualified individual reasonably believes that, after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation, the requested disbursement or transaction may result in the financial exploitation of the eligible adult; and

(2) the broker‑dealer or investment adviser:

(a) immediately, and in no event more than two business days after the requested disbursement or transaction is delayed, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in the suspected or attempted financial exploitation of the eligible adult;

(b) immediately, and in no event more than two business days after the requested disbursement or transaction is delayed, notifies the agencies; and

(c) continues an internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and provides status updates to the agencies upon request.

(B) Any delay of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the broker‑dealer or investment adviser that the disbursement or transaction will not result in the financial exploitation of the eligible adult; or

(2) thirty business days after the date on which the broker‑dealer or investment adviser first delayed the requested disbursement or transaction, unless either of the agencies requests that the broker‑dealer or investment adviser extends the delay, in which case the delay shall expire no more than fifty‑five business days after the date on which the broker‑dealer or investment adviser first delayed the disbursement or transaction, unless sooner terminated or extended by either of the agencies or an order of a court of competent jurisdiction.

(C) The Court of Common Pleas may enter an order extending the delay of the disbursement or transaction, or may order other protective relief based on the petition of either of the agencies, the broker‑dealer or investment adviser that initiated the delay under this section, or another interested party.

Section 35‑1‑860. A qualified individual who, in good faith and exercising reasonable care, complies with Section 35‑1‑850 shall be immune from any administrative or civil liability that might otherwise arise from such delay of a requested disbursement or transaction.

Section 35‑1‑870. A broker‑dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the agencies or to law enforcement, as part of a referral to either the agencies or to law enforcement pursuant to an investigation. The records may include historical records, as well as records relating to the most recent transaction or transactions that may comprise the financial exploitation of an eligible adult. All records made available to the agencies under this section are not public records and are not available for public examination. Nothing in this section shall limit or otherwise impede the authority of the Securities Division of the Office of the Attorney General from accessing or examining the books and records of broker‑dealers and investment advisers as otherwise provided by law.

Section 35‑1‑880. Nothing in this article is intended to, nor does it limit or shield in any manner, a qualified individual from civil liability against any claim, including reasonable attorneys’ fees, costs, and litigation expenses, for participating in or materially aiding the financial exploitation of an eligible adult. Any such claims shall be asserted by the eligible 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 eligible adult, by filing a civil action in circuit court.”

**Securities Division of the Office of the Attorney General, public records**

SECTION 3. Section 35‑1‑607(b) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) a record provided to the Securities Division of the Office of the Attorney General pursuant to Section 35‑1‑870.”

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 18th day of May, 2021.

Approved the 18th day of May, 2021.

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