

CLIENT ALERT



New Florida House Bill Requires Certain Financial Institutions to File Reports with the Florida OFR When They Block or Close a Customer's Account

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On November 20, 2023, Florida Representative Bob Rommel (R-Naples) introduced legislation in the Florida House of Representatives, [Florida House Bill 585](#) (the **Bill**), requiring certain “financial institutions” (defined below) to file a report with the Florida Office of Financial Regulation (**OFR**) whenever the financial institution “suspends, terminates, or takes similar action restricting access to a customer’s or member’s account.” If passed, the Bill would become effective on July 1, 2024.

SUMMARY OF FLORIDA HOUSE BILL 585 (2023)

As currently drafted, the Bill would create a new section 655.49 (*Termination-of-access reports by financial institutions; investigations by the Office of Financial Regulation*) and amend certain existing provisions of chapter 280 (Florida Security for Public Deposits Act) of the Florida Statutes. The Bill would require a financial institution that “terminates, suspends, or takes similar action restricting a customer’s or member’s account access” to file a “termination-of-access” report with the OFR, unless the “termination, suspension, or similar action restricting access was due to:

- “the customer or member initiating the access change;
- “a lack of activity in the account; or
- “the account is presumed unclaimed pursuant to Chapter 717 of the Florida Statutes.”

The termination-of-access report must be filed at such time and must contain such information as the Financial Services Commission (the **Commission**) may require by rule.

APPLICABILITY OF FLORIDA HOUSE BILL 585 (2023)

The Bill would apply to “financial institutions.” The current definition of financial institutions in Florida Statutes section 655.005(i) includes a Florida-chartered state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited-service affiliate, credit union, Agreement Corporation, and Edge Act

corporation. As noted in greater detail below, the Bill would also apply to “qualified public depositories,” as that term is defined in Florida Statutes section 280.01(26).

OFR INVESTIGATION AND DETERMINATION

The Bill would require the OFR to, within 90 days after receipt of a termination-of-access report, investigate the financial institution’s action and determine whether the action was taken in “bad faith” as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action. Notably, the Bill provides neither a definition nor an explanation for what would constitute “bad faith,” which may create ambiguity in the application of the standard.

The Bill also would require the OFR, within 30 days after making such a bad faith determination, to report to the Attorney General and the Chief Financial Officer the bad faith termination, suspension, or similar action restricting a customer’s or member’s account access. The report must (1) include the findings of the investigation, (2) provide a summary of the evidence, and (3) state whether the financial institution violated the Financial Institutions Codes.

Upon sending the report to the Attorney General, the OFR must send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

In addition, the Bill provides that the OFR shall provide any termination-of-access report filed, or any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such a report is otherwise required by law.

PRIVATE CAUSE OF ACTION

The Bill would provide a private cause of action to the aggrieved customer or member against the financial institution determined by the OFR to have acted in bad faith in terminating, suspending, or taking similar action restricting account access. The aggrieved customer may recover damages, together with costs and reasonable attorney fees in certain circumstances. The Bill provides a statute of limitations of 12 months from the OFR’s bad faith determination for filing a cause of action.

PENALTIES

Financial institutions that terminate, suspend, or take a similar action that restricts a customer’s or member’s account access in bad faith, as determined by the OFR, may also be found to be in violation of the Financial Institutions Codes. The same would apply if a financial institution fails to timely file a termination-of-access report altogether. Such violations would subject the financial institutions to the applicable sanctions and penalties in such Financial Institutions Codes, including those administrative fines and penalties set forth in Florida Statutes section 655.041.

QPDs: PENALTIES, SUSPENSION, AND DISQUALIFICATION

The Bill would also amend the list of activities that are grounds for suspension or disqualification or both for a QPD. More particularly, a QPD who is found by the OFR to have acted in bad faith when terminating, suspending, or taking similar action restricting a customer’s or member’s account, or who has failed to timely file a termination-of-access report altogether, is subject to suspension or disqualification or both of its QPD status. With respect to administrative penalties imposed in lieu of suspension or disqualification, a QPD’s bad faith termination, suspension, or similar action restricting a customer’s or member’s account access, as determined by the OFR, or a QPD’s failure to timely file a termination-of-access report altogether, is deemed a knowing and willful violation by the QPD. For each violation, the Chief Financial Officer may impose a penalty upon the QPD in an amount not greater than \$1,000 for each violation.

CURRENT STATUS OF THE BILL

On December 13, 2023, the Insurance and Banking Subcommittee considered the Bill, adopted one amendment, and reported the Bill favorably. The amendment clarified that a financial institution’s bad faith termination, suspension, or other action restricting account access is a violation of the Financial Institutions Code. As of the date

of this Alert, it was not clear when the full Florida House of Representatives and Florida Senate would consider HB 585, if at all.

Winston is focused on providing guidance to financial institutions doing business in Florida and the Bill's impact on their regulatory and compliance obligations. If you are interested, Winston recommends following the Bill's legislative calendar, which can be found [here](#).

▮ The specific chapters under the Florida Financial Institutions Codes are Chapter 655 (Financial Institutions Generally), 657 (Credit Unions), 658 (Banks and Trust Companies), 660 (Trust Business), 662 (Family Trust Companies), 663 (International Banking), 665 (Associations), and 667 (Savings Bank).

▮ Each day a violation continues constitutes a separate violation.

4 Min Read

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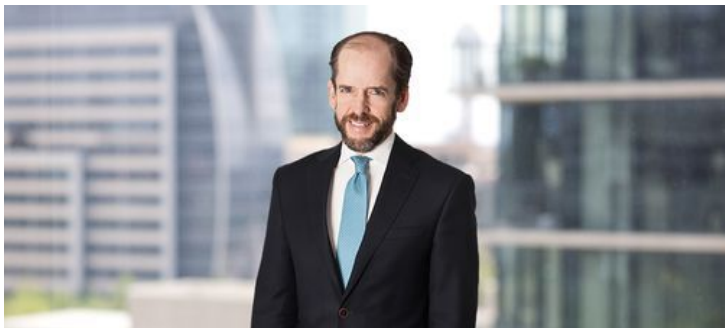
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