

New Florida House Bill Takes Aim at ESG Principles, Creating a New “Unsafe and Unsound Practice” Standard for Financial Institutions Doing Business in Florida

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Introduction

On February 13, 2023, Florida Governor Ron DeSantis (R), joined by Florida Senate President Kathleen Passidomo and House Speaker Paul Renner, announced comprehensive legislation “to protect Floridians from the woke ESG movement that continues to proliferate throughout the financial sector,” noting that such legislation seeks to “protect the investments of Floridians and the ability of Floridians to participate in the economy.” On February 20, 2023, Florida Representative Bob Rommel (R-Naples) introduced Florida House Bill 3 in the Florida House of Representatives (the **Bill**) to address government and corporate activism by amending certain Florida statute provisions relating to the Florida financial sector.

On March 8, 2023, the House Commerce Committee approved the Bill along a mostly partisan line, referring the Bill to the State Affairs Committee for its consideration. As such, the Bill is likely to pass in some form, as Republicans control both chambers of the Florida legislature.

If passed, the Bill would require Financial Institutions to, beginning July 1, 2023, attest to their compliance (under penalty of perjury) with the new “unsafe and unsound practice,” on a form to be prescribed by Florida’s Chief Financial Officer or the Florida Financial Services Commission, as applicable.

Florida House Bill 3 (2023)

As currently drafted, the Bill would amend several provisions of Florida Statutes, including Chapters 280 (Florida Security for Public Deposits Act), 516 (Florida Consumer Finance Act), 560 (Money Services Business) and 655 (Financial Institutions Generally), and require any “qualified public depository,” “financial institution,” “money services business, or “consumer finance company” (collectively, **Financial Institutions**) to:

1. Make determinations about the provision or denial of services based on an analysis of risk factors unique to each individual current or prospective customer; and
2. Not engage in an “unsafe and unsound practice.”

The Bill would create a new “unsafe and unsound practice” standard for such Financial Institutions, prohibiting them from denying or canceling services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:

1. The person’s political opinions, speech, or affiliations;
2. The person’s religious beliefs, religious exercise, or religious affiliates;
3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person’s business sector; or
4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors, including, but not limited to, a person’s: political opinions; religious beliefs; lawful ownership of a firearm; engagement in the lawful manufacture, distribution, sale, or use of firearms, engagement in fossil fuel energy, timber, mining, or agriculture; support of a state or federal government in combatting illegal immigration, drug trafficking, or trafficking; or failure to meet or commit to meet environmental and social governance standards (as long as such person is in compliance with applicable state or federal law).

Implications for Financial Institutions

Failure to comply with either the new “unsafe and unsound practice” or the attestation requirement would be a violation of the applicable Florida statute, subjecting the Financial Institution to certain sanctions and penalties. The Bill would also direct the Attorney General and the Commissioner of Financial Regulation to enforce such provisions to the fullest extent of the law.

To the extent any Florida-licensed Financial Institution engages in an “unsafe and unsound practice,” such entity would also be in violation of the Florida Deceptive and Unfair Trade Practices Act (**FDUTPA**), subjecting such entity to enforcement actions identified in Chapter 501 of the Florida Statutes. Notably, this proposed amendment deviates significantly from current Florida law, as Florida-licensed Financial Institutions are currently exempt from the FDUTPA.

If passed, the Florida Bill might create tension with (i) the Federal constitution’s protection of interstate commerce and (ii) the Federal Reserve Board’s proposed principles providing a high-level framework for the safe and sound management of exposures to climate-related financial risks for large banking organizations. ^[1]

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 interested, Winston recommends following the Bill’s legislative calendar, which can be found [here](#).

^[1] See Federal Reserve, Principles for Climate-Related Financial Risk Management for Large Institutions, Notice and Request for Comment, 87 Fed. Reg. 75,267, 75,270 (Dec. 8, 2022)

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