

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

MAY 3, 2023

Introduction

On May 2, 2023, Florida Governor Ron DeSantis (R), signed comprehensive state legislation that purports “to protect Floridians from the woke ESG movement that continues to proliferate throughout the financial sector.”^[1] Florida House Bill 3 (the **Bill**) requires Financial Institutions (as such term is defined in the next paragraph) 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)

The Bill amends several provisions of the 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)², and requires 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.”

Under the Bill’s new “unsafe and unsound practice” standard applicable to Financial Institutions, such institutions are prohibited from denying or canceling financial 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 affiliations;
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 the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture; support of a state or federal government in combatting illegal immigration, drug trafficking, or human trafficking; engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person herein described; 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

Beginning July 1, 2023, failure to comply with either the new “unsafe and unsound practice” or the attestation requirement will be a violation of the applicable Florida statute, subjecting the Financial Institution to certain sanctions and penalties. The Bill also directs 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 will 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 amendment deviates significantly from current Florida law, as Florida-licensed Financial Institutions are currently exempt from the FDUTPA.

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.^[3]

Winston is focused on providing guidance to financial institutions doing business in Florida and the Bill's impact on their regulatory and compliance obligations.

^[1] Winston & Strawn LLP previously reported on the Bill in a briefing entitled “New Florida House Bill Takes Aim at ESG Principles, Creating a New “Unsafe and Unsound Practice” Standard for Financial Institutions Doing Business in Florida, on March 22, 2023, which can be found [here](#).

^[2] Chapter 655 of the Florida Statutes defines the term “financial institutions” as any Florida-chartered bank, trust company, credit union, international bank agency, international branch, international representative office and international administrative office of a non-US bank.

^[3] 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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