Florida Banking Brief: All The Notable Legal Updates In Q2

By **Joshua Prever and Andrew Balthazor** (July 5, 2024)

In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in Florida banking regulation and policymaking.

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The second quarter of 2024 brought two notable bills that will affect the banking and finance community in Florida.

H.B. 989 brings two main changes, expanding the scope of existing laws that already prohibit state-regulated financial institutions from denying and canceling customer accounts due to political opinions, speech or affiliations to also include federally regulated entities. It also establishes a complaint process when this type of discrimination is suspected.

The bill also provides custodians of virtual currency with rules on collecting fees, and determines when virtual currency is deemed abandoned.

The second bill, S.B. 158, increases the maximum exemption amount allowed for motor vehicles — which will largely affect unsecured creditors and debtors in bankruptcy proceedings.

Both bills were signed by Gov. Ron DeSantis and went into effect on July 1.

H.B. 989

General H.B. 989 addresses a multitude of issues, including two important updates affecting financial institutions.

First, the bill expands existing laws classifying financial institutions that deny or cancel financial services on the basis of political opinions, speech or affiliations as engaging in unsafe and unsound practices. Second, the bill clarifies certain rules with respect to financial institutions and virtual currencies.

Protecting Financial Services Customers From Certain Discrimination

Signed by the governor on May 2[1] and with an effective date of July 1, Florida Statutes, Section 655.0323, now:

- Applies, as written, to federally regulated banks and institutions;

- Adds two more prohibited practices — suspension and termination; and

- Creates a formal complaint feature where people who believe that discrimination has occurred can submit a complaint to the Office of Financial Regulation, or OFR.[2]

The largest potential impact of the amendment is the Legislature's attempt to expand the scope of the law to all financial institutions, as that term is defined in Florida Statutes, Section 655.005(1)(i).[3]

Prior to the amendment, the law only arguably applied to those financial institutions "subject to the financial institutions codes," which by operation of law carved out federal banking institutions.[4]

By removing this language and inserting the broader definition found in Section 655.055(1)(i), the statute, as written, now applies to federal savings or thrift associations along with nationally chartered banks.

It is unclear whether the state will seek to enforce this law against federal institutions, and if so, whether federally chartered banks and institutions along with federal regulators themselves will assert preemption under the National Bank Act — which generally prohibits state banking laws from interfering with a national bank's affairs.[5]

The amended bill still requires financial institutions operating in the state to provide an annual attestation stating that the financial institution is in compliance with, or not in compliance with the nondiscriminatory provisions of the statute.[6]

By expanding the scope of financial institutions beyond those regulated by the state, federally regulated entities will need to determine if they will submit the attestation or rely on preemption arguments under the National Bank Act to excuse noncompliance.

The amended statute also adds "suspension" and "termination" of financial services on the basis of a person's political opinions, speech or affiliations as unsafe and unsound practices for financial institutions.[7] Previously, the statute only included denying or canceling services as a violation.[8]

As of July 1, the statute will include a complaint feature allowing a customer — or member of the financial institution who suspects that there has been discrimination based on political opinions, speech or affiliations — to file a complaint using a mandated form with the OFR within 30 days of when the alleged discrimination occurred.[9]

Careful readers of the statute will notice that it not only allows the customer who asserts that they have been affected to file a complaint, but also permits any person who has an account or is otherwise a so-called member of the financial institution to raise a discrimination claim.

Filing a timely complaint on the state-mandated form commences a review by the OFR that starts with allowing the financial institution to respond to the complaint within 90 calendar days.[10]

The OFR then conducts an initial investigation, and if it determines that there was no basis for denying, canceling, suspending or terminating the account at issue, the investigation must continue to determine if there was a violation of the statute.[11]

Once the investigation is completed or is no longer active, the OFR must prepare a report within 30 days and then send the report within 45-days to the parties of its findings.[12] A report that no violation of the law occurred will be limited to a statement to that effect.[13]

If the OFR finds that a violation did occur, in addition to providing its report and notice to the parties, it must also provide the same to the state Department of Financial Services and the Office of the State Attorney.[14]

While the amendments do not add a private cause of action, the statute permits the state to both prosecute the financial institution and seek civil penalties under the Florida Deceptive and Unfair Trade Practices Act, which includes treble damages and an award of attorney fees if the state is successful.[15]

Restricting Custodial Fees and Clarifying When Virtual Currency is Abandoned

Finally, the amendments to the statute clarify certain rules with respect to financial institutions that hold virtual currency on behalf of third parties.

Broadly, the statute includes virtual currency within the definition of intangible property, but excludes certain digital assets from its definition — specifically, virtual currencies used exclusively in video games and digital assets redeemable for fiat currency, such as some fiat-backed stablecoins.[16]

Importantly, this definition of virtual currency only applies to the rules of disposing of unclaimed property and does not affect other laws, such as Florida's Uniform Commercial Code.[17]

The bill provides protections to owners of virtual currency by prohibiting financial institutions from deducting fees from any custodied virtual currency, unless such deductions are explicitly agreed to in a customer agreement.[18]

Lastly, the amendments provide financial institutions clarity as to when virtual currencies — held by or owed to the institution — can be considered unclaimed and a process for liquidating such abandoned assets and providing the proceeds to the OFR.[19]

In doing so, the statute brings virtual currency within the ambit of the existing rules for disposing of other sorts of unclaimed intangible property — rules including a five-year notice period and a release of liability for the financial institution if it complies with the stated procedures.[20]

S.B. 158

The governor signed S.B. 158 into law on April 26.[21] In a straightforward and simple update to Florida Statutes, Section 222.25, S.B. 158 increases the exemption amount of motor vehicles from $1000 to $5000.[22]

Effective as of July 1, the bill will prevent financial institutions, creditors and other entities from attachment, garnishment or other legal proceedings on "automobiles, motorcycles, trucks, trailers, semitrailers, truck tractors, and semitrailer combination or other vehicles operated on the roads of the state" as defined in Florida Statutes, Section 320.01(1), if the value does not exceed $5000.[23] Importantly, this law does not apply to lenders that have a secured interest in the motor vehicle.

The legislative history shows that the bill was designed in large part to increase the exemption amount allowed for motor vehicles in bankruptcy proceedings.[24]

Prior to the enactment, debtors who did not have homestead exemptions were able to stack the $4000 personal property exemption with the $1000 motor vehicle exemption.[25]

The bill's greatest impact is likely to be felt by unsecured lenders, especially credit card companies that find themselves in bankruptcy court, given that the total amount of assets available for repayment will be reduced.

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[1] See Transmittal Letter From Governor DeSantis to Secretary Byrd approving HB 989, dated May 2, 2024, https://www.flgov.com/wp-content/uploads/2024/05/5-2-2024-House-Transmittal.pdf.

[2] See Chief Financial Officer, FL H.B. 989, 126th Cong. (2024).

[3] Fl. Stat. § 655.005(1)(i) defines Financial Institution as:

> a 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, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

[4] Compare Fl. Stat. § 655.0323(3) (2023).

> Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions subject to the financial institutions codes must attest, under penalty of perjury, on a form prescribed by the commission whether the entity is acting in compliance with subsections (1) and (2).
>
> To Fl. Stat. § 655.0323 (2024).Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions as defined in s. 655.005 must attest, under penalty of perjury, on a form prescribed by the commission whether the entity is acting in compliance with subsections (1) and (2).

[5] 12 U.S.C.A. § 38 et al.

[6] Chief Financial Officer, FL H.B. 989 § 37 (2024), Fl. Stat. § 655.055(3) (2024).

[7] Id. 655.055(2) (2024).

[8] Fl. Stat. § 655.055(2)(2023).

[9] FL H.B. 989 § 37, Fl. Stat. § 655.055(4) (2024).

[10] Id. at § 655.055(5)(b) (2024).

[11] Id. at § 655.055(5)(c) (2024).

[12] Id. at § 655.055(5)(e)(2) (2024).

[13] Id. at § 655.055(5)(e)(1)(b) (2024).

[14] Id. at § 655.055(5)(f) (2024).

[15] Id. at § 655.055(7) (2024).

[16] Id. at § 717.101(33) (2024).

[17] Id. at § 717.101 (2024).

[18] Id. at § 717.1065(2) (2024).

[19] Id. at § 717.1065(1) (2024); see also id. § 717.119(4) (2024).

[20] Id. at § 717.1201(1) (2024).

[21] See Transmittal Letter From Governor DeSantis to Secretary Byrd approving SB 158, dated April 26, 2024, https://www.flgov.com/wp-content/uploads/2024/04/SenateTransmittal_4.26.24_.pdf

[22] See Value of Motor Vehicles Exempt from Legal Process, FL S.B. 158 (2024), Fl. Stat. § 222.25(1) (2024).

[23] Fl. Stat. § 320.01(1).

[24] See Bill Analysis and Fiscal Impact Statement for SB 158, dated January 8, 2024, https://www.flsenate.gov/Session/Bill/2024/158/Analyses/2024s00158.pre.ju.PDF

[25] In re Gatto, 380 B.R. 88, 90 (Bankr. M.D. Fla. 2007) (permitting stacking of the personal property exemption and motor vehicle exemption to a maximum of $5,000).