

**Alert | Financial Regulatory & Compliance/
Florida Government Law & Policy**



December 2023

New Florida Legislation Proposes Notification Requirements for Certain Financial Institutions When They Terminate, Suspend, or Take Similar Action to ‘Restrict’ Customer Account Access

Go-To Guide:

- Florida House Bill 585 proposes to require certain financial institutions operating in Florida to file a “termination-of-access report” with the OFR when they terminate, suspend, or take any “similar action restricting” a customer’s account access, unless an exemption applies.
- Financial institutions may face sanctions and penalties upon an OFR finding of “bad faith” in the financial institution’s termination, suspension, or restriction of the customer’s account access. Financial institutions authorized to accept Florida public deposits may also be subject to suspension or disqualification as qualified public depositories upon a finding of “bad faith.”
- HB 585 would provide affected customers with a private right of action if the OFR finds the financial institution acted in “bad faith” when terminating, suspending, or restricting the customer’s account access.
- HB 587 proposes to exempt from public disclosure termination-of-access reports and any information the OFR obtains as a result of its investigation and examination duties.

On Nov. 20, 2023, Florida Rep. Bob Rommel (R-Naples) introduced legislation in the Florida House of Representatives, Florida House Bill 585 (**HB 585**), to require, *starting July 1, 2024*, that financial institutions including, Florida-chartered banks, trust companies, credit unions, international bank agencies and international branches of foreign banks and Florida qualified public depositories (**QPDs**) (collectively, **Financial Institutions**), file a termination-of-access report with the Florida Office of Financial Regulation (**OFR**), each time the Financial Institution terminates, suspends, or takes any “similar action restricting” a customer’s account access, unless such action was a result of:

- (i) the customer initiating the access change;
- (ii) a lack of activity in the account; or
- (iii) the account is presumed unclaimed pursuant to Chapter 717, Florida statutes.¹

OFR Investigation and Reporting Obligations

HB 585 would require the OFR, **within 90 days** from receipt of a termination-of-access report, to 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 [F]inancial [I]nstitution at the time of the termination, suspension, or similar action.”

Within 30 days of making a determination of a “bad faith” termination, suspension, or similar action restricting a customer or member’s account access, the OFR must report its finding to the Florida Attorney General and the Florida Chief Financial Officer (**CFO**). The report to the Attorney General and CFO will: (i) describe the findings of the OFR investigation; (ii) provide a summary of the evidence; and (iii) state whether the Financial Institution allegedly violated the Florida financial institutions codes. Upon sending the report to the Attorney General, **the OFR must send a copy of the report to the customer by certified mail, return receipt requested.**

To the extent required by law, the OFR will provide copies of termination-of-access reports, including information contained in such report to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of the Financial Institution.

Fines and Penalties

Financial Institutions found to have terminated, suspended, or taken a “similar action restricting” a customer’s account access in bad faith or that failed to timely file a termination-of-access report as required by HB 585 may be found to be in violation of Florida financial institutions codes and be subject to sanctions and penalties.

Financial Institutions that are **QPDs may be subject to suspension or disqualification** if the CFO determines, pursuant to a report delivered by the OFR, that the QPD: (i) acted in bad faith when terminating, suspending, or taking similar action restricting a customer’s account; or (ii) failed to timely file a termination-of-access report with the OFR. In lieu of suspension or disqualification, the CFO may decide to impose administrative fines/penalties amounting to no more than \$1,000 per day of violation.

¹ The term “similar action restricting” is not defined in HB 585.

Customer Right of Action

Critically, the HB 585 provides that an aggrieved customer of a Financial Institution determined by the OFR to have acted in bad faith would have a cause of action against the Financial Institution for damages, including costs and reasonable attorney fees, **if** the customer establishes, **beyond a reasonable doubt**, that the Financial Institution acted in bad faith in terminating, suspending, or taking similar action restricting the customer's account access. The proposed statute of limitation for filing such a cause of action is **12 months** from the OFR's bad faith determination.

Florida HB 587 – Public Records Exemption

Florida House Bill 587 (**HB 587**), which was introduced in the Florida House of Representatives on Nov. 20, 2023, by Florida Rep. Bob Rommel with HB 585 (HB 585 and HB 587, collectively, the **Bills**), proposes to make all termination-of-access reports and any information obtained by the OFR in the termination-of-access reports and as the result of the OFR's investigation and examination duties, **confidential** and exempt from public disclosure under Section 119.07(1) of the Florida Public Records Law, Chapter 119 of the Florida Statutes.

That said, HB 587 provides that the proposed public records exemption is subject to the Open Government Sunset Review Act and would be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Florida Legislature.

Developments on the Bills and Expectations

The Bills were introduced following the enactment of the controversial House Bill No. 3 on May 2, 2023, which impacts the environmental, social and corporate governance (**ESG**) initiatives of the financial industry in Florida.²

For the Bills to become law, bills identical to HB 585 and HB 587 must be passed by the Florida Senate (and not vetoed by the Florida Governor), but as of this date, no such bills have been introduced in the Florida Senate. On Nov. 30, 2023, the Bills were referred to each of the Insurance & Banking Subcommittee, the State Administration & Technology Appropriations Subcommittee, the Ethics, Elections & Open Government Subcommittee and the Commerce Committee. If passed, either in their current form or with amendments, the Bills could be referred to other committees, prior to consideration by the full House. As of the date of this Alert, the Bills were added to Insurance & Banking Subcommittee agenda for its December 13, 2023 meeting.

If bills similar to the Bills are introduced in the Senate, a similar process will unfold. If passed by the House and Senate prior to the March 8, 2024, conclusion of the legislative session, the Bills will be considered by the Florida Governor, who may sign the Bills into law, veto the Bills, or let the Bills become law without his signature.

At this time, it is unclear whether the Bills will pass without amendments, or if passed, if or when implementing regulations required thereunder would be promulgated. Nonetheless, Financial Institutions affected by the Bills should be aware of the potential impact they may have on their current operations.

² GT covered the Florida House Bill No. 3 in detail in this [GT Alert](#).

Authors

This GT Alert was prepared by:

- [David C. Ashburn](#) | +1 850.425.8550 | ashburnd@gtlaw.com
- [Fred E. Karlinsky](#) | +1 954.768.8278 | karlinskyf@gtlaw.com
- [Marina Olman-Pal](#) | +1 305.579.0779 | Marina.Olman@gtlaw.com
- [Claudio J. Arruda](#) | +1 305.579.0874 | arrudac@gtlaw.com
- [Tiffanie Monplaisir](#) | +1 305.579.0682 | Tiffanie.Monplaisir@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin.~ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.« Las Vegas. London.* Long Island. Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Singapore.° Tallahassee. Tampa. Tel Aviv.^ Tokyo.ª United Arab Emirates.< Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. «Khalid Al-Thebity Law Firm in affiliation with Greenberg Traurig, P.A. is applying to register a joint venture in Saudi Arabia. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. °Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ªGreenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2023 Greenberg Traurig, LLP. All rights reserved.*