

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



March 2024

**New Florida Bill Creates Customer Complaint and Florida Office of Financial Regulation Investigation Process for House Bill 3, and Potentially Broadens the Scope of Financial Institutions Subject to House Bill 3**

**Go-To Guide:**

- 2024 Florida House Bill No. 989 (**HB 989** or the **Bill**), expands the controversial 2023 Florida House Bill No. 3 (**HB 3**) to create a customer complaint process with the Florida Office of Financial Regulation (**OFR**) for customers who suspect that a financial institution acted in violation of an “unsafe and unsound practice” standard established in section 655.0323 (2), Florida Statutes created by HB 3.
- HB 989 requires the OFR to inform the financial institution of its receipt of a customer complaint, and to investigate the financial institution to determine whether the action violated an “unsafe and unsound practice” standard established in section 655.0323 (2), Florida Statutes. Financial institutions subject to a customer complaint must file a response with the OFR within 90 calendar days from receiving the OFR’s notice of the complaint.
- Additionally, HB 989 amends section 655.0323(3), Florida Statutes created by HB 3, to require “financial institutions...as defined in s. 655.005” to attest their compliance with the “unsafe and unsound practices” language in sections 655.0323(1) and (2), Florida Statutes created by HB 3. HB 989 could broaden the scope of financial institutions conducting business in Florida that would be subject to HB 3 and HB 989, to include nationally chartered banks, out-of-state chartered banks, Edge Act corporations and Federal Savings

Associations, among others, even if they are not acting as “qualified public depositories” in Florida.

- HB 989 does not create new sanctions or penalties that were not already in HB 3. The language creating a private right of action permitting customers to sue financial institutions for damages that was proposed in a prior version of the Bill was not incorporated into HB 989.
- HB 989, if signed into law, would become effective **July 1, 2024**.

On Mar. 8, 2024, the Florida Senate passed (35 YEAS / 3 NAYS) **Florida House Bill No. 989 (HB 989 or the Bill)**, potentially amending section 655.0323, Florida Statutes, Titled, “Unsafe and unsound practices,” which was created by 2023 Florida House Bill No. 3 (**HB 3**).<sup>1</sup> HB 989, if signed into law, would provide customers who **suspect** that a financial institution acted in violation of an “[u]nsafe and unsound practice” standard established in section 655.0323 (2), Florida Statutes, with a right to submit a complaint to the OFR, which the OFR would then be required to investigate. HB 989 would also amend HB 3 to require that “financial institutions as defined in s. 655.005” comply with the attestation and the “unsafe and unsound practice” standards established in sections 655.0323(1) and (2), Florida Statutes. The Bill, if signed into law, would become effective on **July 1, 2024**.

HB 989 **replaces** 2023 Florida House Bill No. 585 (**HB 585**), which initially proposed requiring financial institutions to file a “termination-of-access report” with the OFR when they terminated, suspended, or took any “similar action restricting” a customer’s account access. HB 585 also created a private right of action for customers to sue the financial institution within 12 months of an OFR finding of “bad faith.” We covered this initial version of HB 585 in this **GT Alert**.

### **Summary of HB 989 and Customer Complaint Process**

Pursuant to HB 989, customers and members of a “financial institution” (defined below) who **suspect** that a financial institution acted in violation of an “unsafe and unsound practice” standard of section 655.0323(2), Florida Statutes -- *i.e.*, the requirement that the financial institution not deny, cancel, suspend or terminate its services to a person or otherwise discriminate against a person in making such services available, or in the terms or conditions of such services, on the basis of the factors outlined in HB 3,<sup>2</sup> may **submit a complaint** to the OFR within 30 days of the action for an investigation.

<sup>1</sup> GT covered the Florida House Bill No. 3 in detail in this **GT Alert**.

<sup>2</sup> These factors are: (a) a person’s political opinions, speech, or affiliations; (b) a person’s religious beliefs, religious exercise, or religious affiliations; (c) 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 (d) the use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors, including, but not limited to the person’s: (i) political opinions, speech, or affiliations; (ii) religious beliefs, religious exercise, or religious affiliations; (iii) lawful ownership of a firearm; (iv) engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition; (v) engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture; (vi) support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking; (vii) engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for, any person covered by section (d)(i)-(vi) and (viii) herein; (viii) failure to meet or commit to meet, or expected failure to meet, any of the following (as long as such person is in compliance with applicable state or

The complaint must be submitted on a form prescribed by the Financial Services Commission (**Commission**) and must contain, at a minimum:

- a. the name and address of the customer or member;
- b. the name of the financial institution; and
- c. the facts upon which the customer or member bases his or her allegation.

A complaint is barred if not filed within the 30-day timeframe. After receiving a complaint, the OFR must notify the financial institution that a complaint has been filed. Once notified, the financial institution, unless precluded by law, would have **90 calendar days** to file a complaint response report (**Response Report**) with the OFR, containing information that the Commission will require by rule.

The OFR would have 90 calendar days from the date it receives the customer's complaint to begin an investigation.

### **OFR Investigation**

If the Response Report indicates the financial institution took action due to suspicious activity reportable to the U.S. Department of the Treasury, Financial Crimes Enforcement Network (**FinCEN**) pursuant to 31 C.F.R. § 1020.320, then the OFR will handle the initial investigation in accordance with section 655.50, Florida Statutes, Titled "Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act" (**Florida AML Act**).

If the OFR determines that the financial institution's action was taken without any basis under the Florida AML Act, the OFR will continue to investigate and determine whether the financial institution acted in violation of an "unsafe and unsound practice" standard established in section 655.0323 (2), Florida Statutes.

### **OFR Report on Findings of Investigation**

After completion or cessation of its investigation, the OFR would have 30 calendar days to create a report on the findings of its investigation (**OFR Report**). The OFR Report may not contain, or must redact, any information that remains confidential and exempt from public disclosure under section 119.07(1) of the Florida Public Records Law, Chapter 119 of the Florida Statutes.

---

federal law: (1) environmental standards, including emissions standards, benchmarks, requirements, or disclosures; (2) social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice; (3) corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or (4) policies or procedures requiring or encouraging employee participation in social justice programming including, but not limited to, diversity, equity or inclusion training.

If the OFR determines that no violation occurred, the OFR Report would: (a) identify the customer complaint for which the OFR Report is made; and (b) state that no violation of an “unsafe and unsound practice” standard of section 655.0323 (2), Florida Statutes has occurred.

Within 45 calendar days after the completion or cessation of the investigation, the OFR would send the OFR Report **to the customer or member who submitted the complaint** via certified mail, return receipt requested, delivery restricted to the addressee, and to the subject financial institution, unless otherwise provided or prohibited by law.

If the OFR finds that a violation occurred, the OFR must notify and provide a copy of the OFR Report to: (a) the customer/member who filed the complaint; (b) the Florida Department of Financial Services; and (c) the office of the state attorney for the judicial circuit affected by or in which the violation allegedly occurred, or the Department of Legal Affairs (within the Office of the Attorney General) if the violation affects more than one judicial circuit, or if the state attorney defers, in writing, to the Department of Legal Affairs.

### **Affected Financial Institutions**

Section 655.0323 (3), Florida Statutes created by HB 3, provides that “financial institutions **subject to the financial institutions codes** must attest, under penalty of perjury, on a form prescribed by the [C]ommission whether the entity is acting in compliance with subsections (1) and (2).”<sup>3</sup> This language arguably restricted the application of HB 3 to state-authorized and state-chartered financial institutions (such as Florida-chartered banks and trust companies, international branches, international representative offices and international administrative offices, among others), pursuant to section 655.001(1), Florida Statutes.<sup>4</sup>

The Bill, however, strikes “subject to the financial institutions codes” from HB 3 and adds “as defined in s. 655.005.” If the Bill is signed into law, this change could require that nationally chartered banks, Edge Act Corporations, Federal Credit Unions, Federal Savings Banks and out-of-state chartered banks that conduct business in Florida, comply with the “unsafe and unsound practice” standards established in sections 655.0323(1) and (2), Florida Statutes of HB 3, the HB 3 attestation requirements, and the HB 989 customer complaint response requirements, irrespective of whether they hold status in Florida as QPDs.<sup>5</sup>

### **Fines and Penalties**

Fines and penalties for failing to comply with the “unsafe and unsound practice” standards established in sections 655.0323(1) and (2), Florida Statutes remain unchanged from those currently provided under HB 3. Failure to comply would constitute a violation of the Florida

---

<sup>3</sup> Emphasis added.

<sup>4</sup> Banks that are not state-authorized or state-chartered banks, such as out-of-state banks and nationally chartered banks that hold status as “qualified public depositories” as defined in section 280.02(26), Florida Statutes (**QPDs**), are subject to the HB 3 “unsafe and unsound practice” standards and attestation requirements pursuant to sections 280.02 (26) and 280.025, Florida Statutes.

<sup>5</sup> While HB 989 appears to expand the applicability of HB 3 to a broader group of financial institutions that were not understood to be subject to HB 3 last year, HB 989 continues to reference a requirement that attestations must begin by July 1, 2023, and continue by July 1 of each year thereafter. If signed as proposed, the OFR will need to address, among other things, its expectations for attestation requirements for these entities that were not understood to be subject to HB 3 as of July 1, 2023.

financial institutions codes and could result in fines and penalties provided for therein.<sup>6</sup> Additionally, engaging in an “unsafe and unsound practice” may constitute a violation of the Florida Deceptive and Unfair Trade Practices Act, which can subject the financial institution to sanctions and penalties provided thereunder, as well as attorney fees and costs to be paid to the Florida Attorney General if the action is successful.

An earlier version of HB 989 included language creating a private right of action permitting customers or members to sue the financial institution for damages. Fortunately, this language was **not** incorporated into the final version of the Bill.

### **Expectations of Signing and Considerations for Financial Institutions**

The Republican supermajority in both chambers of the Florida legislature has supported HB 989, and it is reasonable to expect that Gov. DeSantis will sign HB 989 into law.

As with any law, HB 989 may be subject to a state or federal constitutionality challenge, accompanied by a request for an injunction to enjoin enforcement of the law pending a resolution of the constitutionality challenge. Furthermore, once signed into law, the OFR will be expected to engage in rulemaking to implement HB 989, and interested persons would be able to submit comments on the proposed rules in accordance with Florida’s Administrative Procedure Act (**APA**). Persons who are deemed to be “substantially affected” by the proposed rules may also challenge the validity of the proposed rule by filing a petition with the Florida Division of Administrative Hearings (**DOAH**).

In light of the variables surrounding the general rulemaking process and timelines prescribed under the Florida APA, the OFR may decide to engage in emergency rulemaking to implement the requirements of HB 989 if it determines that emergency rulemaking is necessary to protect the public health, safety, or welfare. “Substantially affected persons” would have an opportunity to challenge the validity of an emergency rule by filing a petition with the DOAH and/or challenge the findings of an emergency by filing a petition with Florida’s District Court of Appeal.

At this time, it is unclear whether or when implementing regulations will be issued, or if the validity of such regulations will be definitively determined, by the July 1 effective date. Nonetheless, in light of the July 1<sup>st</sup> implementation deadline, financial institutions affected by HB 989 (and particularly those financial institutions newly affected) should closely monitor HB 989, and assess the impact the Bill would have on their operations as well as any immediate actions they would need to take if the Bill is signed into law.

---

<sup>6</sup> Relevant Florida financial institutions codes include: Chapter 655 (for Financial Institutions Generally), Chapter 657 (for Credit Unions), Chapter 658 (for Banks and Trust Companies), Chapter 660 (for Trust Business), Chapter 662 (for Family Trust Companies), Chapter 663 (for International Banking), Chapter 665 (for Capital Stock Associations) and Chapter 667 (for Savings Associations).



## Authors

This GT Alert was prepared by:

- [Marina Olman-Pal](#) | +1 305.579.0779 | [Marina.Olman@gtlaw.com](mailto:Marina.Olman@gtlaw.com)
- [David C. Ashburn](#) | +1 850.425.8550 | [ashburnd@gtlaw.com](mailto:ashburnd@gtlaw.com)
- [Fred E. Karlinsky](#) | +1 954.768.8278 | [karlinskyf@gtlaw.com](mailto:karlinskyf@gtlaw.com)
- [Timothy F. Stanfield](#) | 1 850.222.6891 | [stanfieldt@gtlaw.com](mailto:stanfieldt@gtlaw.com)
- [Claudio J. Arruda](#) | +1 305.579.0874 | [arrudac@gtlaw.com](mailto:arrudac@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Berlin.~ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Las Vegas. London.\* Long Island. Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Riyadh.« Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Singapore.= Tallahassee. Tampa. Tel Aviv.^ Tokyo.\* 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. \*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. «Khalid Al-Thebity Law Firm in affiliation with Greenberg Traurig, P.A. is applying to register a joint venture in Saudi Arabia. ∞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. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi 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. ©2024 Greenberg Traurig, LLP. All rights reserved.*