

Insights

May/June Hoosier Banker: Compliance Connection with Brett Ashton

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Question: Recently an elderly customer received into his account a large wire transfer of over \$500,000. The customer came into the branch today, adamant that he wanted to withdraw the funds in cash to take home. If we comply with this request, are we in conflict with any state laws?

Answer: While Indiana law does not limit the amount of cash a depositor may withdraw or require specific actions by the bank, there are several potential issues to consider when any customer, especially an elderly customer, withdraws a large amount of cash. Consider the customer request in the context of his or her normal account activity, and evaluate whether you could be dealing with a case of financial exploitation of an elderly consumer.

The Indiana Senior Consumer Protection Act¹ (ISCPA) provides protections for senior consumers from financial exploitation from persons who, by deception or intimidation, obtain control over the property or assets of a senior consumer. A “senior consumer” is an individual who is at least 60 years of age.² While the ISCPA does not contain direct liability for banks, it is important to also consider federal interagency guidance³ on this issue, which provides guidance on issues to watch for when dealing with at-risk elderly customers, and clarifies the ability of the bank to share information with law enforcement authorities to prevent financial abuse.

Additionally, consider potential safety risks that could exist, not only to the elderly customer who is about to walk out of the branch with a bagful of cash, but also to other bank customers and branch employees who may be present at the time the transaction occurs. While there is no duty to do so, consider hiring an off-duty police officer to be present at the time of pickup and to escort the individual off bank property.

As preparation, develop and maintain a cash withdrawal indemnification agreement for customers to sign, which advises in writing of the inherent risks associated with carrying large amounts of cash on their persons, and contains specific indemnification language that protects the bank from any later claims of liability for unexpected losses that could occur. While an indemnification cannot protect you from a lawsuit, if drafted properly, it will provide the protection necessary to have a lawsuit quickly dismissed.

¹ I.C. § 24-4.6-6

² I.C. § 24-4.6-6-3

³ See Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults: www.fdic.gov/news/news/press/2013/interagency-guidance-on-privacy-laws-and-reporting-financial-abuse-of-older-adults.pdf