

FINANCIAL EXPLOITATION PREVENTION ACT

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kyle R. Andersen

Senate Sponsor: Lyle W. Hillyard

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LONG TITLE

General Description:

This bill enacts the Financial Exploitation Prevention Act.

Highlighted Provisions:

This bill:

- defines terms;
- permits a covered financial institution to delay certain transactions under certain circumstances;
- permits a covered financial institution to notify a law enforcement agency or Adult Protective Services under certain circumstances;
- grants immunity to a covered financial institution, except under certain circumstances; and
- requires the Office of the Attorney General to provide certain information regarding financial exploitation on the attorney general's website.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

7-26-101, Utah Code Annotated 1953**7-26-102**, Utah Code Annotated 1953**7-26-201**, Utah Code Annotated 1953**7-26-202**, Utah Code Annotated 1953**7-26-301**, Utah Code Annotated 1953**7-26-302**, Utah Code Annotated 1953**7-26-401**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **7-26-101** is enacted to read:**CHAPTER 26. FINANCIAL EXPLOITATION PREVENTION ACT****Part 1. General Provisions****7-26-101. Title.**This chapter is known as the "Financial Exploitation Prevention Act."Section 2. Section **7-26-102** is enacted to read:**7-26-102. Definitions.**As used in this chapter:(1) "Adult Protective Services" means the same as that term is defined in Section[62A-3-301](#).(2) "Covered financial institution" means any of the following that operate in the state:(a) a state or federally chartered:(i) bank;(ii) savings and loan association;(iii) savings bank;(iv) industrial bank;

56 (v) credit union;

57 (vi) trust company; or

58 (vii) depository institution; or

59 (b) a financial institution.

60 (3) "Financial exploitation" means:

61 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money,
62 assets, or other property of an individual; or

63 (b) an act or omission, including through a power of attorney, guardianship, or
64 conservatorship of an individual, to:

65 (i) obtain control, through deception, intimidation, or undue influence, over the
66 individual's money, assets, or other property to deprive the individual of the ownership, use,
67 benefit, or possession of the individual's money, assets, or other property; or

68 (ii) convert the individual's money, assets, or other property to deprive the individual of
69 the ownership, use, benefit, or possession of the individual's money, assets, or other property.

70 (4) "Law enforcement agency" means the same as that term is defined in Section
71 [53-1-102](#).

72 (5) "Qualified individual" means:

73 (a) a branch manager of a covered financial institution; or

74 (b) a director, officer, employee, agent, or other representative that a covered financial
75 institution designates.

76 (6) "Third party associated with a vulnerable adult" means an individual:

77 (a) who is a parent, spouse, adult child, sibling, or other known family member of a
78 vulnerable adult;

79 (b) whom a vulnerable adult authorizes the financial institution to contact;

80 (c) who is a co-owner, additional authorized signatory, or beneficiary on a vulnerable
81 adult's account; or

82 (d) who is an attorney, trustee, conservator, guardian or other fiduciary whom a court
83 or a government agency selects to manage some or all of the financial affairs of the vulnerable

84 adult.

85 (7) "Transaction" means any of the following services that a covered financial
86 institution provides:

87 (a) a transfer or request to transfer or disburse funds or assets in an account;

88 (b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or
89 issue a money order, cashier's check, or official check;

90 (c) a request to negotiate a check or other negotiable instrument;

91 (d) a request to change the ownership of, or access to, an account;

92 (e) a request to sell or transfer a security or other asset, or a request to affix a medallion
93 stamp or provide any form of guarantee or endorsement in connection with an attempt to sell or
94 transfer a security or other asset, if the person selling or transferring the security or asset is not
95 required to obtain a license under Section 61-1-3;

96 (f) a request for a loan, extension of credit, or draw on a line of credit;

97 (g) a request to encumber any movable or immovable property; or

98 (h) a request to designate or change the designation of beneficiaries to receive any
99 property, benefit, or contract right.

100 (8) "Vulnerable adult" means:

101 (a) an individual who is 65 years of age or older; or

102 (b) the same as that term is defined in Section 62A-3-301.

103 Section 3. Section 7-26-201 is enacted to read:

104 **Part 2. General Prevention of Financial Exploitation**

105 **7-26-201. Permitted delay of wire transfers.**

106 (1) This section applies to a wire transfer that transfers money from a consumer
107 account at a covered financial institution.

108 (2) If a qualified individual reasonably believes that executing a requested wire transfer
109 will result in financial exploitation, the covered financial institution may:

110 (a) delay the wire transfer; and

111 (b) contact:

112 (i) a law enforcement agency;

113 (ii) Adult Protective Services; or

114 (iii) a joint co-owner on the account.

115 (3) The delay of a wire transfer described in Subsection (2) expires when the earlier of
116 the following occurs:

117 (a) the covered financial institution reasonably determines that the wire transfer is not
118 financial exploitation; or

119 (b) 15 business days pass after the day on which the covered financial institution first
120 initiated the delay of the wire transfer.

121 Section 4. Section **7-26-202** is enacted to read:

122 **7-26-202. Office of the Attorney General website.**

123 The Office of the Attorney General shall post on the Office of the Attorney General's
124 website up-to-date information regarding financial scams, including:

125 (1) the most prominent and common characteristics of financial scams;

126 (2) current or trending financial scams;

127 (3) resources for a vulnerable adult who suspects a financial scam; and

128 (4) resources for an individual who suspects the financial exploitation of a vulnerable
129 adult.

130 Section 5. Section **7-26-301** is enacted to read:

131 **Part 3. Permitted Acts to Prevent Financial Exploitation of Vulnerable Adults**

132 **7-26-301. Delay of a transaction involving a vulnerable adult.**

133 (1) A covered financial institution may delay a transaction involving a vulnerable adult,
134 if:

135 (a) a qualified individual reasonably believes that executing the requested transaction
136 will result in financial exploitation of the vulnerable adult; or

137 (b) a law enforcement agency provides the covered financial institution information
138 demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult is
139 occurring, has or may have occurred, is being attempted, or has been or may have been

attempted.

(2) (a) A covered financial institution that delays a transaction in accordance with Subsection (1):

(i) except as provided in Subsection (2)(b), shall no later than two business days after the day on which the transaction is delayed, send notice of the delay and the reason for the delay to each party:

(A) authorized to transact business on the account; and

(B) for which the covered financial institution has contact information;

(ii) may send notice of the delay, the reason for the delay, or any additional information about the transaction to:

(A) a law enforcement agency; or

(B) Adult Protective Services.

(b) A covered financial institution may:

(i) decide not to provide notice to a party described in Subsection (2)(a)(i) if a qualified individual reasonably believes the party has engaged in attempted financial exploitation of the vulnerable adult; or

(ii) send a notice described in Subsection (2)(a) electronically.

(3) (a) Except as provided in Subsection (3)(b), the delay of a transaction described in Subsection (1) expires when the earlier of the following occurs:

(i) the covered financial institution reasonably determines that the transaction will not result in financial exploitation of a vulnerable adult; or

(ii) 15 business days pass after the day on which the covered financial institution first initiated the delay of the transaction.

(b) (i) If a covered financial institution receives a request from a law enforcement agency to extend the delay of a transaction beyond the expiration date established in Subsection (3)(a), the covered financial institution may extend the delay no more than 25 business days after the day on which the covered financial institution first initiated the delay.

(ii) A court of competent jurisdiction may enter an order:

168 (A) extending or shortening the delay of a transaction; or

169 (B) providing relief based on the petition of the covered financial institution, law
170 enforcement agency, or an interested party.

171 Section 6. Section **7-26-302** is enacted to read:

172 **7-26-302. Permitted notifications.**

173 (1) A covered financial institution may notify a law enforcement agency or Adult
174 Protective Services if a qualified individual believes that the financial exploitation of a
175 vulnerable adult is occurring, has or may have occurred, is being attempted, or has been or may
176 have been attempted.

177 (2) A covered financial institution may notify a third party associated with a vulnerable
178 adult if a qualified individual believes that the financial exploitation of the vulnerable adult is
179 occurring, has or may have occurred, is being attempted, or has been or may have been
180 attempted.

181 (3) A covered financial institution may choose not to notify a third party associated
182 with a vulnerable adult as described in Subsection (2), if a qualified individual reasonably
183 believes that the third party is, may be, or may have been engaged in the financial exploitation
184 of the vulnerable adult.

185 Section 7. Section **7-26-401** is enacted to read:

186 **Part 4. Immunity**

187 **7-26-401. Immunity.**

188 (1) A covered financial institution or a director, officer, employee, attorney,
189 accountant, agent, or other representative of the covered financial institution:

190 (a) has no duty to act under this chapter to protect a vulnerable adult from financial
191 exploitation by a third person; and

192 (b) is immune from all criminal, civil, and administrative liability for not taking a
193 permissive action under this chapter.

194 (2) A covered financial institution or a director, officer, employee, attorney,
195 accountant, agent, or other representative of the covered financial institution who chooses to

196 act as described in:

197 (a) Subsection 7-26-201(2), is immune from all criminal, civil, and administrative
198 liability for the act, unless the act is done in bad faith; and

199 (b) Section 7-26-301 or 7-26-302, is immune from all criminal, civil, and
200 administrative liability for the act, unless the act:

201 (i) is done in bad faith; and

202 (ii) causes pecuniary loss to a vulnerable adult suspected of being a victim of financial
203 exploitation.

204 (3) The immunity described in this section does not extend to an individual that is a
205 principal, a conspirator, or an accessory after the fact to a criminal offense involving the
206 financial exploitation of a vulnerable adult.