

HB0459S02 compared with HB0459

~~deleted text~~ shows text that was in HB0459 but was deleted in HB0459S02.

inserted text shows text that was not in HB0459 but was inserted into HB0459S02.

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Representative Kyle R. Andersen proposes the following substitute bill:

FINANCIAL EXPLOITATION PREVENTION ACT

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kyle R. Andersen

Senate Sponsor: _____

Cosponsors:

Suzanne Harrison

Travis M. Seegmiller

Susan Duckworth

Marsha Judkins

LONG TITLE

General Description:

This bill enacts the Financial Exploitation Prevention Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a covered financial institution:
 - to take certain actions before executing certain transactions;
 - to display certain information regarding financial exploitation; and
 - to require each employee complete initial and ongoing training regarding

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financial exploitation;

- ▶ 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;
- ▶ establishes penalties;
- ▶ 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:

AMENDS:

13-2-1, as last amended by Laws of Utah 2019, Chapters 115, 423 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 115

ENACTS:

13-57-101, Utah Code Annotated 1953

13-57-102, Utah Code Annotated 1953

13-57-201, Utah Code Annotated 1953

13-57-202, Utah Code Annotated 1953

13-57-203, Utah Code Annotated 1953

13-57-204, Utah Code Annotated 1953

13-57-301, Utah Code Annotated 1953

13-57-302, Utah Code Annotated 1953

13-57-401, Utah Code Annotated 1953

13-57-402, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

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Section 1. Section **13-2-1** is amended to read:

13-2-1. Consumer protection division established -- Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls During Emergencies Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act;
- (s) Chapter 51, Transportation Network Company Registration Act;
- (t) Chapter 52, Residential Solar Energy Disclosure Act;
- (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (v) Chapter 54, Ticket Website Sales Act; ~~and~~
- (w) Chapter 56, Ticket Transferability Act~~[-];~~ and
- (x) Chapter 57, Financial Exploitation Prevention Act.

Section 2. Section **13-57-101** is enacted to read:

CHAPTER 57. FINANCIAL EXPLOITATION PREVENTION ACT

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Part 1. General Provisions

13-57-101. Title.

This chapter is known as the "Financial Exploitation Prevention Act."

Section 3. Section **13-57-102** is enacted to read:

13-57-102. 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;

(v) credit union;

(vi) trust company; or

(vii) institution that:

(A) holds or receives deposits, savings, or share accounts;

(B) issues certificates of deposit; or

(C) provides to customers accounts that are subject to withdrawal by checks, drafts, or other instruments or by electronic means to effect third party payments; or

(b) an institution under the jurisdiction of the commissioner of Financial Institutions as provided in Title 7, Financial Institutions Act.

(3) "Financial exploitation" means:

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

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

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

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

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

(5) "Qualified individual" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) a request to designate or change the designation of beneficiaries to receive any

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property, benefit, or contract right.

(8) "Vulnerable adult" means:

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

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

Section 4. Section **13-57-201** is enacted to read:

Part 2. General Prevention of Financial Exploitation

13-57-201. Required approval for certain wire transfers.

(1) This section applies to a wire transfer that:

~~— (a) —~~ transfers money **internationally** from ~~an~~ **a consumer** account at a covered financial institution; ~~and~~

~~— (b) (i) —~~ is **international**; or

~~— (ii) —~~ is **domestic and in an amount of \$10,000 or more**.

(2) Before a covered financial institution may execute a wire transfer described in Subsection (1), a qualified individual shall:

(a) discuss with the individual initiating the wire transfer financial scam information and characteristics, as described on the Office of the Attorney General's website as provided in Section 13-57-204;

(b) **in the presence of the individual initiating the wire transfer, attempt to contact each joint or co-owner on the account; and**

(c) obtain written documentation from the individual initiating the wire transfer that the ~~qualifying~~ **qualified** individual:

(i) held the discussion described in Subsection (2)(a); and

(~~c~~) ~~ii~~ ~~make a reasonable attempt~~ **attempted** to contact each joint or co-owner on the account **as described in Subsection (2)(b).**

(3) (a) If a qualified individual reasonably believes that an individual initiating a wire transfer will result in financial exploitation, the covered financial institution may:

(i) delay the wire transfer; and

(ii) contact a law enforcement agency or Adult Protective Services.

(b) The delay of a wire transfer described in this Subsection (3) expires when the earlier of the following occurs:

(i) the covered financial institution reasonably determines that the wire transfer is not

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financial exploitation; or

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

Section 5. Section **13-57-202** is enacted to read:

13-57-202. Required displays.

Each office and branch of a covered financial institution shall display clear and conspicuous warnings to customers:

(1) in areas frequented by customers in the ordinary course of executing transactions with the financial institution; and

(2) detailing the most prominent and common characteristics of financial scams, including:

(~~f1~~a) that financial scams often involve:

(~~f~~a)i) unexpected calls or emails;

(~~f~~b)ii) threats of adverse action or promises of unexpected money;

(~~f~~c)iii) demands for secrecy;

(~~f~~d)iv) a sense of urgency;

(~~f~~e)v) demands for transfers or wiring of money; or

(~~f~~f)vi) warnings that your financial institution will question your transfer or wiring of funds; and

(~~f~~2)b) notice that the details and characteristics of financial scams may be obtained from any reliable source including the Federal Trade Commission, the Department of Commerce, and the Office of the Attorney General's website.

Section 6. Section **13-57-203** is enacted to read:

13-57-203. Required training -- Continuing education.

(1) A covered financial institution shall require each employee of the covered financial institution to complete training:

(a) regarding:

(i) the identification of financial scams and financial exploitation; and

(ii) the required and permitted actions established under this chapter; and

(b) within three months after the day on which the covered financial institution hires the employee.

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(2) A covered financial institution shall require each employee of the covered financial institution to complete ~~one hour of~~ continuing education~~:~~

~~(a)~~ each calendar year regarding:

~~(i)~~ a the identification of financial scams and financial exploitation; and

~~(ii)~~ b the required and permitted actions established under this chapter~~;~~ and~~:~~

~~(b)~~ during each calendar year.

† Section 7. Section **13-57-204** is enacted to read:

13-57-204. Office of the Attorney General website.

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

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

(2) current or trending financial scams;

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

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

Section 8. Section **13-57-301** is enacted to read:

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

13-57-301. Delay of a transaction involving a vulnerable adult.

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

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

(b) a law enforcement agency provides the covered financial institution information demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult is 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:

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(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) subject to Subsection 13-57-201(2), 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; and

(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:

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

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

Section 9. Section **13-57-302** is enacted to read:

13-57-302. Permitted notifications.

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

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

(3) Subject to Subsection 13-57-201(2), a financial institution may choose not to notify a third party associated with a vulnerable adult as described in Subsection (2), if a qualified individual reasonably believes that the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable adult.

Section 10. Section **13-57-401** is enacted to read:

Part 4. Enforcement

13-57-401. Penalties.

(1) A covered financial institution that fails to comply with Subsection 13-57-201(2) is liable ~~for no more than the sum of:~~

~~(a) to the individual who initiates the wire transfer:~~

~~(a) if a court determines that the wire transfer resulted in fraud or financial exploitation of the individual; and~~

~~(b) for an amount that is no more than:~~

~~(i) the lesser of:~~

~~(A) the wire transfer amount; ~~and~~ or~~

~~(~~B~~) ~~reasonable~~ \$50,000; and~~

~~(ii) attorney fees.~~

(2) The division may fine a covered financial institution that fails to comply with Section 13-57-202 in an amount determined by the department in accordance with Sections 13-1-2 and 63J-1-504.

Section 11. Section **13-57-402** is enacted to read:

13-57-402. Immunity.

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

(a) except as required in Subsection 13-57-201(2), has no duty to act under this chapter to protect a vulnerable adult from financial exploitation by a third person; and

(b) is immune from all criminal, civil, and administrative liability for not taking a

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permissive action under this chapter.

(2) A covered financial institution or a director, officer, employee, attorney, accountant, agent, or other representative of the covered financial institution who chooses to act as described in:

(a) Subsection 13-57-201(3), is immune from all criminal, civil, and administrative liability for the act, unless the act is done in bad faith; and

(b) Section 13-57-301 or 13-57-302, is immune from all criminal, civil, and administrative liability for the act, unless the act:

(i) is done in bad faith; and

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

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