

**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: \_\_\_\_\_

6	Cosponsors:	Marsha Judkins	Travis M. Seegmiller
7	Susan Duckworth	Karen Kwan	
	Suzanne Harrison		

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**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;
- ▶ 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

**3rd Sub. H.B. 459**



24           ▶ requires the Office of the Attorney General to provide certain information regarding  
25 financial exploitation on the attorney general's website.

26 **Money Appropriated in this Bill:**

27           None

28 **Other Special Clauses:**

29           None

30 **Utah Code Sections Affected:**

31 AMENDS:

32           **13-2-1**, as last amended by Laws of Utah 2019, Chapters 115, 423 and last amended by  
33 Coordination Clause, Laws of Utah 2019, Chapter 115

34 ENACTS:

35           **13-57-101**, Utah Code Annotated 1953

36           **13-57-102**, Utah Code Annotated 1953

37           **13-57-201**, Utah Code Annotated 1953

38           **13-57-202**, Utah Code Annotated 1953

39           **13-57-301**, Utah Code Annotated 1953

40           **13-57-302**, Utah Code Annotated 1953

41           **13-57-401**, Utah Code Annotated 1953

42           **13-57-402**, Utah Code Annotated 1953



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

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

46           **13-2-1. Consumer protection division established -- Functions.**

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

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

50           (a) Chapter 5, Unfair Practices Act;

51           (b) Chapter 10a, Music Licensing Practices Act;

52           (c) Chapter 11, Utah Consumer Sales Practices Act;

53           (d) Chapter 15, Business Opportunity Disclosure Act;

54           (e) Chapter 20, New Motor Vehicle Warranties Act;

- 55 (f) Chapter 21, Credit Services Organizations Act;
- 56 (g) Chapter 22, Charitable Solicitations Act;
- 57 (h) Chapter 23, Health Spa Services Protection Act;
- 58 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 59 (j) Chapter 26, Telephone Fraud Prevention Act;
- 60 (k) Chapter 28, Prize Notices Regulation Act;
- 61 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 62 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 63 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 64 (o) Chapter 39, Child Protection Registry;
- 65 (p) Chapter 41, Price Controls During Emergencies Act;
- 66 (q) Chapter 42, Uniform Debt-Management Services Act;
- 67 (r) Chapter 49, Immigration Consultants Registration Act;
- 68 (s) Chapter 51, Transportation Network Company Registration Act;
- 69 (t) Chapter 52, Residential Solar Energy Disclosure Act;
- 70 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 71 (v) Chapter 54, Ticket Website Sales Act; ~~and~~
- 72 (w) Chapter 56, Ticket Transferability Act[-]; and
- 73 (x) Chapter 57, Financial Exploitation Prevention Act.

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

75 **CHAPTER 57. FINANCIAL EXPLOITATION PREVENTION ACT**

76 **Part 1. General Provisions**

77 **13-57-101. Title.**

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

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

80 **13-57-102. Definitions.**

81 As used in this chapter:

82 (1) "Adult Protective Services" means the same as that term is defined in Section  
83 62A-3-301.

84 (2) "Covered financial institution" means any of the following that operate in the state:

85 (a) a state or federally chartered:

- 86 (i) bank;
- 87 (ii) savings and loan association;
- 88 (iii) savings bank;
- 89 (iv) industrial bank;
- 90 (v) credit union;
- 91 (vi) trust company; or
- 92 (vii) institution that:
  - 93 (A) holds or receives deposits, savings, or share accounts;
  - 94 (B) issues certificates of deposit; or
  - 95 (C) provides to customers accounts that are subject to withdrawal by checks, drafts, or
  - 96 other instruments or by electronic means to effect third party payments; or
  - 97 (b) an institution under the jurisdiction of the commissioner of Financial Institutions as
  - 98 provided in Title 7, Financial Institutions Act.
- 99 (3) "Financial exploitation" means:
  - 100 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money,
  - 101 assets, or other property of an individual; or
  - 102 (b) an act or omission, including through a power of attorney, guardianship, or
  - 103 conservatorship of an individual, to:
    - 104 (i) obtain control, through deception, intimidation, or undue influence, over the
    - 105 individual's money, assets, or other property to deprive the individual of the ownership, use,
    - 106 benefit, or possession of the individual's money, assets, or other property; or
    - 107 (ii) convert the individual's money, assets, or other property to deprive the individual of
    - 108 the ownership, use, benefit, or possession of the individual's money, assets, or other property.
- 109 (4) "Law enforcement agency" means the same as that term is defined in Section
- 110 [53-1-102](#).
- 111 (5) "Qualified individual" means:
  - 112 (a) a branch manager of a covered financial institution; or
  - 113 (b) a director, officer, employee, agent, or other representative that a covered financial
  - 114 institution designates.
- 115 (6) "Third party associated with a vulnerable adult" means an individual:
  - 116 (a) who is a parent, spouse, adult child, sibling, or other known family member of a

117 vulnerable adult;

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

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

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

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

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

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

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

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

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

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

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

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

139 (8) "Vulnerable adult" means:

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

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

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

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

144 **13-57-201. Required approval for certain wire transfers.**

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

147 (2) Before a covered financial institution may execute a wire transfer described in

148 Subsection (1), a qualified individual shall:

149 (a) discuss with the individual initiating the wire transfer financial scam information  
150 and characteristics, as described on the Office of the Attorney General's website as provided in  
151 Section 13-57-202;

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

154 (c) obtain written documentation from the individual initiating the wire transfer that the  
155 qualified individual:

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

157 (ii) attempted to contact each joint or co-owner on the account as described in

158 Subsection (2)(b).

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

161 (i) delay the wire transfer; and

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

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

165 (i) the covered financial institution reasonably determines that the wire transfer is not  
166 financial exploitation; or

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

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

170 **13-57-202. Office of the Attorney General website.**

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

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

174 (2) current or trending financial scams;

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

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

178 Section 6. Section 13-57-301 is enacted to read:

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

180 **13-57-301. Delay of a transaction involving a vulnerable adult.**

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

182 if:

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

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

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

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

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

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

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

198 (A) a law enforcement agency; or

199 (B) Adult Protective Services.

200 (b) A covered financial institution may:

201 (i) subject to Subsection 13-57-201(2), decide not to provide notice to a party described  
202 in Subsection (2)(a)(i) if a qualified individual reasonably believes the party has engaged in  
203 attempted financial exploitation of the vulnerable adult; and

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

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

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

209 (ii) 15 business days pass after the day on which the covered financial institution first

210 initiated the delay of the transaction.

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

215 (ii) A court of competent jurisdiction may enter an order:  
216 (A) extending or shortening the delay of a transaction; or  
217 (B) providing relief based on the petition of the covered financial institution, law  
218 enforcement agency, or an interested party.

219 Section 7. Section **13-57-302** is enacted to read:

220 **13-57-302. Permitted notifications.**

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

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

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

233 Section 8. Section **13-57-401** is enacted to read:

234 **Part 4. Enforcement**

235 **13-57-401. Penalties.**

236 A covered financial institution that fails to comply with Subsection [13-57-201\(2\)](#) is  
237 liable to the individual who initiates the wire transfer:

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

240 (2) for an amount that is no more than:



241 (a) the lesser of:

242 (i) the wire transfer amount; or

243 (ii) \$50,000; and

244 (b) attorney fees.

245 Section 9. Section **13-57-402** is enacted to read:

246 **13-57-402. Immunity.**

247 (1) A covered financial institution or a director, officer, employee, attorney,

248 accountant, agent, or other representative of the covered financial institution:

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

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

253 (2) A covered financial institution or a director, officer, employee, attorney,

254 accountant, agent, or other representative of the covered financial institution who chooses to  
255 act as described in:

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

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

260 (i) is done in bad faith; and

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

263 (3) The immunity described in this section does not extend to an individual that is a

264 principal, a conspirator, or an accessory after the fact to a criminal offense involving the

265 financial exploitation of a vulnerable adult.