

Financial Exploitation – Depository Institutions
Chapter 8, Article 29
§§ 8-2901 to 8-2903

8-2901

Terms, defined.

For purposes of sections 8-2901 to 8-2903:

(1) Account means a contract of deposit of funds between the depositor and a financial institution and:

(a) The account is owned by a vulnerable adult or senior adult, whether individually or with one or more other persons; or

(b) A vulnerable adult or senior adult is a beneficiary of the account, including a formal or informal trust account, a payable on death account, a conservatorship account, or a guardianship account;

(2) Department means the Department of Health and Human Services;

(3) Financial exploitation means:

(a) The wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a vulnerable adult or senior adult by any person; or

(b) An act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, a vulnerable adult or senior adult, to:

(i) Obtain control, through deception, intimidation, fraud, or undue influence, over the vulnerable adult's or senior adult's money, assets, or other property to deprive the vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property; or

(ii) Convert the money, assets, or other property of a vulnerable adult or senior adult to deprive a vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property;

(4) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the Department of Banking and Finance, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a subsidiary or affiliate of any such entity; or a trust company as defined in section 8-230;

(5) Law enforcement agency has the same meaning as in section 28-359;

(6) Senior adult has the same meaning as in section 28-366.01;

(7) Transaction means any of the following as applicable to services provided by a financial institution:

- (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 for a loan, guarantee of a loan, extension of credit, or draw on a line of credit;
- (f) A request to encumber any movable or immovable property, including real property, personal property, or fixtures; and
- (g) A request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for a vulnerable adult or senior adult at death; and

(8) Vulnerable adult has the same meaning as in section 28-371.

Last amended:

~ Laws 2020, LB 909, § 18

Effective Date: November 14, 2020

8-2902

Legislative Intent.

- (1) It is the intent of the Legislature to provide legal protection to financial institutions so that they have the discretion to take action to assist in detecting and preventing financial exploitation.
- (2) The Legislature recognizes that financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers.
- (3) The Legislature recognizes that financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions.
- (4) The Legislature recognizes that financial institutions do not have a duty to contravene the valid instructions of their customers and nothing in sections 8-2901 to 8-2903 creates such a duty.

Last amended:

~ Laws 2020, LB 909, § 19

Effective Date: November 14, 2020

8-2903

Financial exploitation of a vulnerable adult or senior adult; financial institution; authority to delay, refuse, or prevent certain activity; expiration; effect; immunity.

(1) When a financial institution, or an employee of a financial institution, reasonably believes, or has received information from the department or a law enforcement agency demonstrating that it is reasonable to believe, that financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted, the financial institution may, but is not required to:

(a) Delay or refuse a transaction with or involving the vulnerable adult or senior adult;

(b) Delay or refuse to permit the withdrawal or disbursement of funds contained in the vulnerable adult's or senior adult's account;

(c) Prevent a change in ownership of the vulnerable adult's or senior adult's account;

(d) Prevent a transfer of funds from the vulnerable adult's or senior adult's account to an account owned wholly or partially by another person;

(e) Refuse to comply with instructions given to the financial institution by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the vulnerable adult or senior adult; or

(f) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for a vulnerable adult or senior adult at death.

(2) A financial institution is not required to act under subsection (1) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use the financial institution's discretion to determine whether or not to act under subsection (1) of this section based on the information available to the financial institution at the time.

(3)(a)(i) A financial institution may notify any third party reasonably associated with a vulnerable adult or senior adult if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(ii) A third party reasonably associated with a vulnerable adult or senior adult includes, but is not limited to, the following: (A) A parent, spouse, adult child, sibling, or other known family member or close associate of a vulnerable adult or senior adult; (B) an authorized contact provided by a vulnerable adult or senior adult to the financial institution; (C) a co-owner, additional authorized signatory, or beneficiary on a vulnerable adult's or a senior adult's account; (D) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by a vulnerable adult or senior adult, a court, or a third party to manage some or all of the financial affairs of the vulnerable adult or senior adult; and (E) an attorney known to represent or have represented the vulnerable adult or senior adult.

(b) A financial institution may choose not to notify any third party reasonably associated with a vulnerable adult or senior adult of suspected financial exploitation of the vulnerable adult or senior adult if the financial institution reasonably believes the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable adult or senior adult or if requested to refrain from making a notification by a law enforcement agency, if such notification could interfere with a law enforcement investigation.

(c) Nothing in this subsection shall prevent a financial institution from notifying the department or a law enforcement agency, if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(4) The authority granted the financial institution under subsection (1) of this section expires upon the sooner of: (a) Thirty business days after the date on which the financial institution first acted under subsection (1) of this section; (b) when the financial institution is satisfied that the transaction or act will not result in financial exploitation of the vulnerable adult or senior adult; or (c) upon termination by an order of a court of competent jurisdiction.

(5) Unless otherwise directed by order of a court of competent jurisdiction, a financial institution may extend the duration under subsection (4) of this section based on a reasonable belief that the financial exploitation of a vulnerable adult or senior adult may continue to occur or continue to be attempted.

(6) A financial institution and its bank holding company, if any, and any employees, agents, officers, and directors of the financial institution and its bank holding company, if any, shall be immune from any civil, criminal, or administrative liability that may otherwise exist (a) for delaying or refusing to execute a transaction, withdrawal, or disbursement, or for not delaying or refusing to execute such transaction, withdrawal, or disbursement under this section and (b) for actions taken in furtherance of determinations made under subsections (1) through (5) of this section.

(7)(a) Notwithstanding any other law to the contrary, the refusal by a financial institution to engage in a transaction as authorized under subsection (1) of this section shall not constitute the wrongful dishonor of an item under section 4-402, Uniform Commercial Code.

(b) Notwithstanding any other law to the contrary, a reasonable belief that payment of a check will facilitate the financial exploitation of a vulnerable adult or senior adult shall constitute reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R. part 229, as such acts and part existed on January 1, 2020.

Last amended:

~ Laws 2020, LB 909, § 20

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