

AMENDMENTS TO LB853

Introduced by Banking, Commerce and Insurance.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. For purposes of sections 1 to 3 of this act:

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

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

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

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

12           (3) Financial exploitation means:

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

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

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

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

26           (4) Financial institution means a bank, savings bank, building and  
27 loan association, savings and loan association, or credit union, whether

1 chartered by the Department of Banking and Finance, the United States, or  
2 a foreign state agency; any other similar organization which is covered  
3 by federal deposit insurance; a subsidiary or affiliate of any such  
4 entity; or a trust company as defined in section 8-230;

5 (5) Law enforcement agency has the same meaning as in section  
6 28-359;

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

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

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

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

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

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

17 (e) A request for a loan, guarantee of a loan, extension of credit,  
18 or draw on a line of credit;

19 (f) A request to encumber any movable or immovable property,  
20 including real property, personal property, or fixtures; and

21 (g) A request to designate or change the designation of  
22 beneficiaries to receive any property, benefit, or contract right for a  
23 vulnerable adult or senior adult at death; and

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

25 Sec. 2. (1) It is the intent of the Legislature to provide legal  
26 protection to financial institutions so that they have the discretion to  
27 take action to assist in detecting and preventing financial exploitation;

28 (2) The Legislature recognizes that financial institutions are in a  
29 unique position to potentially discover financial exploitation when  
30 conducting transactions on behalf of and at the request of their  
31 customers;

1       (3) The Legislature recognizes that financial institutions have  
2 duties imposed by contract and duties imposed by both federal and state  
3 law to conduct transactions requested by their customers faithfully and  
4 timely in accordance with the customer's instructions; and

5       (4) The Legislature recognizes that financial institutions do not  
6 have a duty to contravene the valid instructions of their customers and  
7 nothing in sections 1 to 3 of this act creates such a duty.

8       Sec. 3. (1) When a financial institution, or an employee of a  
9 financial institution, reasonably believes, or has received information  
10 from the department or a law enforcement agency demonstrating that it is  
11 reasonable to believe, that financial exploitation of a vulnerable adult  
12 or senior adult may have occurred, may have been attempted, is occurring,  
13 or is being attempted, the financial institution may, but is not required  
14 to:

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

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

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

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

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

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

31       (2) A financial institution is not required to act under subsection

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

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

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

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

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

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

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

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

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

31       (b) Notwithstanding any other law to the contrary, a reasonable

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