Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2179
(Senators J. Lee, Hogan, Mathern)
(Representatives K. Koppelman, Kreidt, Roers Jones)

AN ACT to create and enact chapter 6-08.5 of the North Dakota Century Code, relating to the prevention of financial exploitation; and to amend and reenact section 6-08.1-03 of the North Dakota Century Code, relating to a financial institution's duty of confidentiality.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-03. Duty of confidentiality.

A financial institution may not disclose customer information to ~~any~~a person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the agriculture commissioner ~~that~~ a financial institution has notified a customer of the availability of the North Dakota mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.
7. For purposes of reporting suspected exploitation of an eligible adult as defined by section 12.1-31-07. ~~Nothing in this~~This subsection may not be construed to impose ~~upon~~ a duty on a financial institution ~~a duty~~ to investigate an alleged or suspected exploitation of an eligible adult or to make a report to a governmental agency or law enforcement agency.
8. For purposes of reporting suspected financial exploitation of an eligible adult under chapter 6-08.5 to a law enforcement agency or the department of human services. This subsection may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to the department of human services or law enforcement agency.

SECTION 2. Chapter 6-08.5 of the North Dakota Century Code is created and enacted as follows:

6-08.5-01. Definitions.

As used in this chapter:

1. "Account" means funds or assets held by a financial service provider, including a deposit account, savings account, share account, certificate of deposit, trust account, individual

retirement account, guardianship or conservatorship account, investment or securities account, retirement account, loan, extension of credit, or safe deposit box.

2. "Eligible adult" means an individual who is at least sixty-five years of age or a vulnerable adult as defined in section 50-25.2-01.

3. "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of an eligible adult's money, assets, or property for one's own benefit or the benefit of a third party. The term includes defrauding an eligible adult.

4. "Financial service provider" means a financial institution, credit union, savings and loan association, or trust company.

5. "Financial transaction" means any of the following as applicable to the business or services provided by a financial service provider:

   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 clearing house 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 an account;

   e. A request for a loan, extension of credit, or draw on a line of credit; or

   f. A request to designate or change the designation of a beneficiary to receive any property, benefit, or contract right for an eligible adult.

6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

6-08.5-02. Eligible adult financial exploitation prevention - Duration of refusal or hold - Notification and reporting - Immunity.

1. If a financial service provider has a good faith belief to suspect financial exploitation occurred, was attempted, or is being attempted, the financial service provider may refuse a financial transaction or hold a financial transaction on an account:

   a. Belonging to the eligible adult;

   b. On which the eligible adult is a beneficiary, including a trust, guardianship, or conservatorship account; or

   c. Belonging to a person suspected of perpetrating financial exploitation.

2. A financial service provider may refuse a financial transaction or hold a financial transaction under this section if the department of human services or a law enforcement agency provides information to the financial service provider demonstrating it is reasonable to believe financial exploitation occurred, was attempted, or is being attempted.

3. Subsection 2 does not require a financial service provider to refuse a financial transaction or hold a financial transaction if provided with information by the department of human services or a law enforcement agency alleging financial exploitation occurred, was attempted, or is being attempted. Except as ordered by a court, a financial service provider may determine whether to refuse a financial transaction or hold a financial transaction based on the information available to the financial service provider.

4. A financial service provider refusing a financial transaction or holding a financial transaction based on a good faith belief to suspect financial exploitation occurred, was attempted, or is being attempted shall:

   a. Except with regard to an account administered by a bank or trust company in a fiduciary capacity, make a reasonable effort to notify, orally or in writing, one or more parties authorized to transact business on the account; and

   b. Report the incident to the department of human services, if the incident involves financial exploitation of a vulnerable adult as defined in section 50-25.2-01.

5. Notice under this section is not required to be provided to a party authorized to conduct business on the account if the party is the suspected perpetrator of financial exploitation.

6. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability:

   a. For refusing or not refusing a financial transaction, or for holding or not holding a financial transaction under this section; or

   b. For actions taken in furtherance of the determination made under subdivision a, if the determination is based upon a good faith belief financial exploitation occurred, was attempted, or is being attempted.

6-08.5-03. Reporting to a law enforcement agency or the department of human services - Immunity.

1. If a financial service provider, or an employee, officer, or director of a financial service provider has a good faith belief to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider, or an employee, officer, or director of a financial service provider may report the information to a law enforcement agency or the department of human services.

2. This section does not impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to a law enforcement agency or the department of human services.

3. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section if the determination is made based on a good faith belief that financial exploitation occurred, was attempted, or is being attempted.

6-08.5-04. Individuals who may be contacted regarding suspected financial exploitation - Immunity - Exemption from customer consent and notice provisions.

1. A financial service provider may offer to an eligible adult the opportunity to submit and update periodically a list of individuals the eligible adult authorizes the financial service provider to contact if the financial service provider has reasonable cause to suspect the eligible adult is a victim or a target of financial exploitation.

2. Notwithstanding subsection 1, a financial service provider having a good faith belief to suspect an eligible adult is the victim or target of financial exploitation may convey the suspicion to one or more of the following individuals, provided the individual is not the suspected perpetrator:

   a. An individual on the list described in subsection 1.

   b. A co-owner, additional authorized signatory, or beneficiary on the eligible adult's account.

c. An attorney-in-fact, trustee, conservator, guardian or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult.

3. If a financial service provider provides information under this section, the financial service provider may limit the information, such as disclosing only that the financial service provider has reasonable cause to suspect the eligible adult may be a victim or target of financial exploitation, without disclosing any other details or confidential personal information regarding the financial affairs of the eligible adult.

4. The financial service provider may choose not to contact an individual on the list provided under subsection 1, if the financial service provider suspects the individual is engaged in financial exploitation.

5. The financial service provider may rely on information provided by the eligible adult in compiling a list of contact individuals.

6. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for contacting an individual or electing not to contact an individual under this section and for actions taken in furtherance of that determination if the determination is made based on a good faith belief financial exploitation occurred, was attempted, or is being attempted.

7. Contact with an individual, and any information provided under this section, is exempt from the customer consent provisions in sections 6-08.1-03 and 6-08.1-04.

6-08.5-05. Refusal to accept power of attorney - Immunity.

1. A financial service provider may refuse to accept an acknowledged power of attorney if the financial service provider has a good faith belief to suspect the principal is or may be the victim or target of financial exploitation by the agent or individual acting for or with the agent.

2. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for refusing to accept a power of attorney or for accepting a power of attorney under this section and for actions taken in furtherance of that determination if the determination was based on a good faith belief financial exploitation occurred, was attempted, or was being attempted.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2179.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 86	Nays 0	Absent 8

Secretary of the Senate

Received by the Governor at 11:09 AM. on April 4, 2019.

Approved at 2:44 PM. on April 8, 2019.

Governor

Filed in this office this 9th day of April, 2019,

at 9:48 o'clock A. M.

Secretary of State