

Sixty-sixth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2179**

Introduced by

Senators J. Lee, Hogan, Mathern

Representatives K. Koppelman, Kreidt, Roers Jones

1 A BILL for an Act to create and enact chapter 6-08.5 of the North Dakota Century Code, relating  
2 to the prevention of financial exploitation; and to amend and reenact section 6-08.1-03 of the  
3 North Dakota Century Code, relating to a financial institution's duty of confidentiality.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **6-08.1-03. Duty of confidentiality.**

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

- 11 1. Pursuant to consent granted by the customer in accordance with this chapter.
- 12 2. To a person other than a governmental agency or law enforcement agency pursuant to  
13 valid legal process.
- 14 3. To a governmental agency or law enforcement agency pursuant to valid legal process  
15 in accordance with this chapter.
- 16 4. For the purpose of reporting a suspected violation of the law in accordance with this  
17 chapter.
- 18 5. For the purpose of notifying the agriculture commissioner ~~that~~ a financial institution  
19 has notified a customer of the availability of the North Dakota mediation service.
- 20 6. As part of the disclosure made of deposits of public corporations with financial  
21 institutions in the security pledge schedule verified by the custodian of securities  
22 pursuant to section 21-04-09.
- 23 7. For purposes of reporting suspected exploitation of an eligible adult as defined by  
24 section 12.1-31-07. ~~Nothing in this~~This subsection may not be construed to impose

1           ~~upon a duty on a~~ financial institution a duty to investigate an alleged or suspected  
2           exploitation of an eligible adult or to make a report to a governmental agency or law  
3           enforcement agency.

- 4           8.   For purposes of reporting suspected financial exploitation of an eligible adult under  
5           chapter 6-08.5 to a law enforcement agency or the department of human services.  
6           This subsection may not be construed to impose a duty on a financial institution to  
7           investigate a suspected financial exploitation of an eligible adult or to make a report to  
8           the department of human services or law enforcement agency.

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

11          **6-08.5-01. Definitions.**

12          As used in this chapter:

- 13          1.   "Account" means funds or assets held by a financial service provider, including a  
14              deposit account, savings account, share account, certificate of deposit, trust account,  
15              individual retirement account, guardianship or conservatorship account, investment or  
16              securities account, retirement account, or loan or extension of credit.
- 17          2.   "Eligible adult" means an individual who is at least sixty-five years of age or a  
18              vulnerable adult as defined in section 50-25.2-01.
- 19          3.   "Financial exploitation" means the wrongful or unauthorized taking, withholding,  
20              appropriation, or use of an eligible adult's money, assets, or property for one's own  
21              benefit or the benefit of a third party.
- 22          4.   "Financial service provider" means a financial institution, credit union, savings and  
23              loan association, or trust company.
- 24          5.   "Financial transaction" means any of the following as applicable to the business or  
25              services provided by a financial service provider:
- 26              a.   A transfer or request to transfer or disburse funds or assets in an account;  
27              b.   A request to initiate a wire transfer, initiate an automated clearing house transfer,  
28                  or issue a money order, cashier's check, or official check;  
29              c.   A request to negotiate a check or other negotiable instrument;  
30              d.   A request to change the ownership of an account; or  
31              e.   A request for a loan, extension of credit, or draw on a line of credit.

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 reasonable cause 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 reasonable cause 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.

- 1        5. Notice under this section is not required to be provided to a party authorized to  
2        conduct business on the account if the party is the suspected perpetrator of financial  
3        exploitation.
- 4        6. If a financial service provider refuses to conduct a financial transaction or hold a  
5        financial transaction as authorized by this section based on the financial service  
6        provider's reasonable cause to suspect financial exploitation occurred, was attempted,  
7        or is being attempted, the refusal or hold must expire upon the earlier of:
  - 8        a. Ten business days after the date the financial service provider first refused a  
9        financial transaction or held the financial transaction;
  - 10       b. The time at which the financial service provider reasonably believes the financial  
11       transaction will not result in financial exploitation; or
  - 12       c. The time at which the person requesting the transaction has been advised of a  
13       potential risk in the transaction and the person has requested the transaction to  
14       continue, as long as the person is not the suspected perpetrator of financial  
15       exploitation.
- 16       7. A financial service provider may extend the time permitted in this section to refuse a  
17       financial transaction or hold a financial transaction based on a reasonable belief  
18       additional time is needed to investigate the financial transaction or to prevent financial  
19       exploitation.
- 20       8. Notwithstanding subsections 6 and 7, a court of competent jurisdiction may enter an  
21       order extending the time a financial service provider must refuse a financial  
22       transaction or hold a financial transaction based on reasonable cause to suspect  
23       financial exploitation occurred, was attempted, or is being attempted.
- 24       9. A financial service provider, or an employee of a financial service provider, is immune  
25       from all criminal, civil, and administrative liability:
  - 26       a. For refusing or not refusing a financial transaction, or for holding or not holding a  
27       financial transaction under this section; or
  - 28       b. For actions taken in furtherance of the determination made under subdivision a, if  
29       the determination is based upon a reasonable belief.

**6-08.5-03. 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 reasonable cause 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 individual known by the financial service provider to be a family member of the eligible adult, including a parent, adult child, or sibling.
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 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 reasonable belief financial exploitation occurred or was attempted.

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

3        **6-08.5-04. Refusal to accept power of attorney - Immunity.**

4        1. A financial service provider may refuse to accept an acknowledged power of attorney if  
5        the financial service provider has reasonable cause to suspect the principal is or may  
6        be the victim or target of financial exploitation by the agent or individual acting for or  
7        with the agent.

8        2. A financial service provider, or an employee of a financial service provider, is immune  
9        from all criminal, civil, and administrative liability for refusing to accept a power of  
10       attorney or for accepting a power of attorney under this section and for actions taken  
11       in furtherance of that determination if the determination was based upon reasonable  
12       belief financial exploitation occurred or was attempted.