Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017

SENATE BILL NO. 2322
(Senators J. Lee, O. Larsen, Heckaman)
(Representatives Keiser, K. Koppelman, Delmore)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the financial exploitation of vulnerable adults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Financial exploitation - Vulnerable adult.

1. As used in this section:

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

   b. "Financial exploitation" means:

      (1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an eligible adult; or

      (2) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

         (a) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or property, to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property; or

         (b) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

   c. "Qualified individual" means any agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

2. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall notify the department of human services and the commissioner.

3. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify a third party reasonably associated with the eligible adult or any other person permitted under state or federal law or rule, rules of a self-regulating organization, or customer agreement. Disclosure may not be made to a designated third party who is suspected of financial exploitation or other abuse of the eligible adult.

4. A qualified individual who in good faith and exercising reasonable care discloses information under this section is immune from administrative or civil liability that might otherwise result from disclosure or for any failure to notify the customer of the disclosure.

5. a. A broker-dealer or investment adviser may delay a transaction or disbursement of funds or securities from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) The broker-dealer or investment adviser reasonably believes the requested transaction or disbursement may result in financial exploitation of an eligible adult after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation; and

(2) The broker-dealer or investment adviser:

(a) Provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless a party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult, within two days after the requested transaction or disbursement;

(b) Notifies the department of human services and the commissioner within two days after the requested transaction or disbursement; and

(c) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary.

b. Any delay of a transaction or disbursement authorized by this section expires upon the earlier of:

(1) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the eligible adult; or

(2) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities, unless the department of human services or the commissioner requests the broker-dealer or investment adviser extend the delay, in which case the delay expires within twenty-five business days after the date the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities unless the delay is terminated by either of the agencies or an order of a court of competent jurisdiction.

c. A court of competent jurisdiction or the commissioner may enter an order extending the delay of the transaction or disbursement of funds or securities or may order other protective relief based on the broker-dealer, investment adviser, or other interested party's petition that initiated the delay under this section.

6. A broker-dealer or investment adviser who in good faith and exercising reasonable care complies with this section is immune from any administrative or civil liability that may otherwise arise from a delay in the transaction or disbursement in accordance with this section.

7. A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the department of human services and to law enforcement, either as part of a referral to the department or to law enforcement, or upon request of the department or law enforcement pursuant to an investigation. The records may include historical records and records relating to the most recent transaction that may comprise financial exploitation of an eligible adult. Any record provided to the department of human services or law enforcement under this section is an exempt record under chapter 44-04. This section does not limit or otherwise impede the authority of the commissioner to access or examine the books and records of a broker-dealer or investment adviser as otherwise provided by law.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2322.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 90	Nays 2	Absent 2

Secretary of the Senate

Received by the Governor at _____M. on _____, 2017.

Approved at _____M. on _____, 2017.

Governor

Filed in this office this _____day of _____, 2017,

at _____ o'clock _____M.

Secretary of State