

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

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

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

4 **6-08.5-02. Eligible adult financial exploitation prevention - Duration of refusal or**
5 **hold - Notification and reporting - Immunity.**

6 1. If a financial service provider has ~~reasonable cause~~a good-faith belief to suspect
7 financial exploitation occurred, was attempted, or is being attempted, the financial
8 service provider may refuse a financial transaction or hold a financial transaction on an
9 account:

10 a. Belonging to the eligible adult;

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

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

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

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

26 4. A financial service provider refusing a financial transaction or holding a financial
27 transaction based on ~~reasonable cause~~a good-faith belief to suspect financial
28 exploitation occurred, was attempted, or is being attempted shall:

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

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

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

6 6. ~~If a financial service provider refuses to conduct a financial transaction or hold a~~
7 ~~financial transaction as authorized by this section based on the financial service~~
8 ~~provider's reasonable cause to suspect financial exploitation occurred, was attempted,~~
9 ~~or is being attempted, the refusal or hold must expire upon the earlier of:~~

10 ~~a. Ten business days after the date the financial service provider first refused a~~
11 ~~financial transaction or held the financial transaction;~~

12 ~~b. The time at which the financial service provider reasonably believes the financial~~
13 ~~transaction will not result in financial exploitation; or~~

14 ~~c. The time at which the person requesting the transaction has been advised of a~~
15 ~~potential risk in the transaction and the person has requested the transaction to~~
16 ~~continue, as long as the person is not the suspected perpetrator of financial~~
17 ~~exploitation.~~

18 ~~7. A financial service provider may extend the time permitted in this section to refuse a~~
19 ~~financial transaction or hold a financial transaction based on a reasonable belief~~
20 ~~additional time is needed to investigate the financial transaction or to prevent financial~~
21 ~~exploitation.~~

22 ~~8. Notwithstanding subsections 6 and 7, a court of competent jurisdiction may enter an~~
23 ~~order extending the time a financial service provider must refuse a financial~~
24 ~~transaction or hold a financial transaction based on reasonable cause to suspect~~
25 ~~financial exploitation occurred, was attempted, or is being attempted.~~

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

28 a. For refusing or not refusing a financial transaction, or for holding or not holding a
29 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 ~~reasonable~~ 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 ~~reasonable cause~~ 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.

~~e. — 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, ~~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 ~~reasonable~~ a good-faith belief financial exploitation occurred ~~or, 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.

6-08.5-04. 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 ~~reasonable cause~~ 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 ~~upon reasonable~~ or a good-faith belief financial exploitation occurred ~~or, was attempted, or was being attempted.~~