

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2322

Introduced by

Senators J. Lee, O. Larsen, Heckaman

Representatives Keiser, K. Koppelman, Delmore

1 A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota  
2 Century Code, relating to the financial exploitation of vulnerable adults.

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

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

6 **Financial exploitation - Vulnerable adult.**

7 1. As used in this section:

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

10 b. "Financial exploitation" means:

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

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

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

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

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

- 1       2. If a qualified individual reasonably believes financial exploitation of an eligible adult  
2       may have occurred, may have been attempted, or is being attempted, the qualified  
3       individual shall notify the department of human services and the commissioner.
- 4       3. If a qualified individual reasonably believes financial exploitation of an eligible adult  
5       may have occurred, may have been attempted, or is being attempted, a qualified  
6       individual may notify a third party reasonably associated with the eligible adult or any  
7       other person permitted under state or federal law or rule, rules of a self-regulating  
8       organization, or customer agreement. Disclosure may not be made to a designated  
9       third party who is suspected of financial exploitation or other abuse of the eligible  
10       adult.
- 11       4. A qualified individual who in good faith and exercising reasonable care discloses  
12       information under this section is immune from administrative or civil liability that might  
13       otherwise result from disclosure or for any failure to notify the customer of the  
14       disclosure.
- 15       5. a. A broker-dealer or investment adviser may delay a **transaction or** disbursement of  
16       funds or securities from an account of an eligible adult or an account on which an  
17       eligible adult is a beneficiary if:
- 18               (1) The broker-dealer or investment adviser reasonably believes the requested  
19               **transaction or** disbursement may result in financial exploitation of an eligible  
20               adult after initiating an internal review of the requested **transaction or**  
21               disbursement and the suspected financial exploitation; and
- 22               (2) The broker-dealer or investment adviser:
- 23                       (a) Provides written notification of the delay and the reason for the delay  
24                       to all parties authorized to transact business on the account, unless a  
25                       party is reasonably believed to have engaged in suspected or  
26                       attempted financial exploitation of the eligible adult, within two days  
27                       after the requested **transaction or** disbursement;
- 28                       (b) Notifies the department of human services and the commissioner  
29                       within two days after the requested **transaction or** disbursement; and
- 30                       (c) Continues its internal review of the suspected or attempted financial  
31                       exploitation of the eligible adult as necessary.

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

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

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

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

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

23          7. A broker-dealer or investment adviser shall provide access to or copies of records that  
24          are relevant to the suspected or attempted financial exploitation of an eligible adult to  
25          the department of human services and to law enforcement, either as part of a referral  
26          to the department or to law enforcement, or upon request of the department or law  
27          enforcement pursuant to an investigation. The records may include historical records  
28          and records relating to the most recent transaction that may comprise financial  
29          exploitation of an eligible adult. Any record provided to the department of human  
30          services or law enforcement under this section is an exempt record under chapter  
31          44-04. This section does not limit or otherwise impede the authority of the

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- 1 commissioner to access or examine the books and records of a broker-dealer or
- 2 investment adviser as otherwise provided by law.