LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 853

Introduced by Williams, 36.

Read first time January 09, 2020

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to banks and banking; to authorize financial
2 institutions to place a hold on certain customer transactions in
3 cases of financial exploitation.
4 Be it enacted by the people of the State of Nebraska,
Section 1. For purposes of sections 1 to 3 of this act:

(1) Account means a contract of deposit of funds between the depositor and a financial institution and:

(a) The account is owned by a vulnerable adult or senior adult, whether individually or with one or more other persons; or

(b) A vulnerable adult or senior adult is a beneficiary of the account, including a formal or informal trust account, a payable on death account, a conservatorship account, or a guardianship account;

(2) Financial exploitation means:

(a) The wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a vulnerable adult or senior adult by any person; or

(b) An act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, a vulnerable adult or senior adult, to:

(i) Obtain control, through deception, intimidation, fraud, or undue influence, over the vulnerable adult's or senior adult's money, assets, or other property to deprive the vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property; or

(ii) Convert the money, assets, or other property of a vulnerable adult or senior adult to deprive a vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property;

(3) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the Department of Banking and Finance, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a subsidiary or affiliate of any such entity; or a trust company as defined in section 8-230;

(4) Senior adult has the same meaning as in section 28-366.01;

(5) Transaction means any of the following as applicable to services provided by a financial institution:
(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 clearinghouse 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, or access to, an account;

(e) A request for a loan, guarantee of a loan, extension of credit, or draw on a line of credit;

(f) A request to encumber any movable or immovable property, including real property, personal property, or fixtures; and

(g) A request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for a vulnerable adult or senior adult at death; and

(6) Vulnerable adult has the same meaning as in section 28-371.

Sec. 2. (1) It is the intent of the Legislature to provide legal protection to financial institutions so that they have the discretion to take action to assist in detecting and preventing financial exploitation;

(2) The Legislature recognizes that financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers;

(3) The Legislature recognizes that financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions; and

(4) The Legislature recognizes that financial institutions do not have a duty to contravene the valid instructions of their customers, nor to prevent criminal activity directed at their customers, and nothing in sections 1 to 3 of this act creates such a duty.

Sec. 3. (1) When a financial institution, or an employee of a
financial institution, reasonably believes, or has received information
from the Department of Health and Human Services or a law enforcement
agency demonstrating that it is reasonable to believe, that financial
exploitation of a vulnerable adult or senior adult may have occurred, may
have been attempted, or is being attempted, the financial institution
may, but is not required to:

(a) Delay or refuse a transaction with or involving the vulnerable
adult or senior adult;

(b) Delay or refuse to permit the withdrawal or disbursement of
funds contained in the vulnerable adult's or senior adult's account;

(c) Prevent a change in ownership of the vulnerable adult's or
senior adult's account;

(d) Prevent a transfer of funds from the vulnerable adult's or
senior adult's account to an account owned wholly or partially by another
person;

(e) Refuse to comply with instructions given to the financial
institution by an agent or a person acting for or with an agent under a
power of attorney signed or purported to have been signed by the
vulnerable adult or senior adult; or

(f) Prevent the designation or change the designation of
beneficiaries to receive any property, benefit, or contract rights for a
vulnerable adult or senior adult at death.

(2) A financial institution is not required to act under subsection
(1) of this section when provided with information alleging that
financial exploitation may have occurred, may have been attempted, or is
being attempted, but may use the financial institution's discretion to
determine whether or not to act under subsection (1) of this section
based on the information available to the financial institution at the
time.

(3)(a)(i) A financial institution may notify any third party
reasonably associated with a vulnerable adult or senior adult if the
financial institution believes that the financial exploitation of a
vulnerable adult or senior adult is occurring, has or may have occurred,
is being attempted, or has been or may have been attempted.

(ii) A third party reasonably associated with a vulnerable adult or
senior adult includes, but is not limited to, the following: (A) A
parent, spouse, adult child, sibling, or other known family member or
close associate of a vulnerable adult or senior adult; (B) an authorized
contact provided by a vulnerable adult or senior adult to the financial
institution; (C) a co-owner, additional authorized signatory, or
beneficiary on a vulnerable adult's or a senior adult's account; (D) an
attorney in fact, trustee, conservator, guardian, or other fiduciary who
has been selected by a vulnerable adult or senior adult, a court, or a
third party to manage some or all of the financial affairs of the
vulnerable adult or senior adult; and (E) an attorney known to represent
or have represented the vulnerable adult or senior adult.

(b) A financial institution may choose not to notify any third party
reasonably associated with a vulnerable adult or senior adult of
suspected financial exploitation of the vulnerable adult or senior adult
if the financial institution believes the third party is, may be, or may
have been engaged in the financial exploitation of the vulnerable adult
or senior adult.

(4) The authority granted the financial institution under subsection
(1) of this section expires upon the sooner of: (a) Thirty business days
after the date on which the financial institution first acted under
subsection (1) of the section; (b) when the financial institution is
satisfied that the transaction or act will not result in financial
exploitation of the vulnerable adult or senior adult; or (c) upon
termination by an order of a court of competent jurisdiction.

(5) Unless otherwise directed by order of a court of competent
jurisdiction, a financial institution may extend the duration under
subsection (4) of this section based on a reasonable belief that the
financial exploitation of a vulnerable adult or senior adult may continue
to occur or continue to be attempted.

(6) A financial institution and all employees, officers, and
directors of the financial institution shall be immune from any civil,
criminal, or administrative liability that might otherwise exist (a) for
delaying or refusing to execute a transaction or disbursement, or for not
delaying or refusing to execute such transaction or disbursement under
this section and (b) for actions taken in furtherance of the
determination made under subsections (1) and (5) of this section, if the
determination is based upon a good faith belief that financial
exploitation may have occurred, may have been attempted, or was being
attempted.

(7)(a) Notwithstanding any other law to the contrary, the refusal by
a financial institution to engage in a transaction as authorized under
subsection (1) of this section shall not constitute the wrongful dishonor
of an item under section 4-402, Uniform Commercial Code.

(b) Notwithstanding any other law to the contrary, a reasonable
belief that payment of a check will facilitate the financial exploitation
of a vulnerable adult or senior adult shall constitute reasonable grounds
to doubt the collectability of the item for purposes of the federal Check
Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal
Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R.
part 229, as such acts and part existed on January 1, 2020.