

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 853**

Introduced by Williams, 36.

Read first time January 09, 2020

Committee:

- 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,

1           Section 1. For purposes of sections 1 to 3 of this act:

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

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

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

9           (2) Financial exploitation means:

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

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

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

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

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

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

30          (5) Transaction means any of the following as applicable to services  
31 provided by a financial institution:

1       (a) A transfer or request to transfer or disburse funds or assets in  
2 an account;

3       (b) A request to initiate a wire transfer, initiate an automated  
4 clearinghouse transfer, or issue a money order, cashier's check, or  
5 official check;

6       (c) A request to negotiate a check or other negotiable instrument;

7       (d) A request to change the ownership of, or access to, an account;

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

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

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

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

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

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

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

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

31       Sec. 3. (1) When a financial institution, or an employee of a

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

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

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

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

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

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

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

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

30 (3)(a)(i) A financial institution may notify any third party  
31 reasonably associated with a vulnerable adult or senior adult if the

1 financial institution believes that the financial exploitation of a  
2 vulnerable adult or senior adult is occurring, has or may have occurred,  
3 is being attempted, or has been or may have been attempted.

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

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

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

29 (5) Unless otherwise directed by order of a court of competent  
30 jurisdiction, a financial institution may extend the duration under  
31 subsection (4) of this section based on a reasonable belief that the

1 financial exploitation of a vulnerable adult or senior adult may continue  
2 to occur or continue to be attempted.

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

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

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