



2026 South Dakota Legislature

House Bill 1238

Introduced by: **Representative** Heermann

1 **An Act to protect financial institutions taking action to prevent the financial**
 2 **exploitation of consenting, senior, or vulnerable adults.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

5 Terms used in this chapter mean:

6 (1) "Account," a contract for the deposit of funds between the depositor and a financial
 7 institution, provided:

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

10 (b) A consenting, senior, or vulnerable adult is a beneficiary of the account;

11 (2) "Consenting adult," any account holder who consents, in writing, to the financial
 12 institution and its employees responding to any reasonable concern regarding
 13 financial exploitation;

14 (3) "Financial exploitation," the wrongful or unauthorized taking, withholding,
 15 appropriation, or use of money, assets, or other property, or the identifying
 16 information of a consenting, senior, or vulnerable adult, by any individual or an act
 17 or omission by an individual, including through the use of a power of attorney on
 18 behalf of, or as the conservator or guardian of, a consenting, senior, or vulnerable
 19 adult, to:

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

24 (b) Convert the money, assets, or other property of a consenting, senior, or
 25 vulnerable adult to deprive the adult of the ownership, use, benefit, or
 26 possession of the property;

- 1 (4) "Financial institution," a bank, savings bank, building and loan association, savings
 2 and loan association, or credit union; any other similar organization that is covered
 3 by federal deposit insurance; a subsidiary or affiliate of any entity listed in this
 4 subdivision; or a trust company;
- 5 (5) "Senior adult," an individual age sixty-five or older;
- 6 (6) "Transaction," any of the following as applicable to services provided by a financial
 7 institution:
- 8 (a) A transfer or request to transfer or disburse funds or assets in an account;
 9 (b) A request to initiate a wire transfer, initiate an automated clearinghouse
 10 transfer, or issue a money order, cashier's check, or official check;
 11 (c) A request to negotiate a check or other negotiable instrument;
 12 (d) A request to change the ownership of, or access to, an account;
 13 (e) A request for a loan, guarantee of a loan, extension of credit, or draw on a
 14 line of credit;
 15 (f) A request to encumber any movable or immovable property, including real
 16 property, personal property, or fixtures; and
 17 (g) A request to designate or change the designation of beneficiaries to receive
 18 any property, benefit, or contract right for a consenting, senior, or
 19 vulnerable adult at death; and
- 20 (7) "Vulnerable adult," an individual age eighteen or older who has a substantial
 21 mental or functional impairment or for whom a guardian or conservator has been
 22 appointed.

23 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

24 If a financial institution, or an employee of a financial institution, reasonably
 25 believes, or has received information from a state agency or a law enforcement agency
 26 demonstrating that it is reasonable to believe financial exploitation of a consenting, senior,
 27 or vulnerable adult may have occurred, may have been attempted, is occurring, or is being
 28 attempted, the financial institution may:

- 29 (1) Delay or refuse a transaction with or involving the consenting, senior, or vulnerable
 30 adult;
- 31 (2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the
 32 account of the consenting, senior, or vulnerable adult;
- 33 (3) Prevent a change in ownership of the account of a consenting, senior, or vulnerable
 34 adult;

- 1 (4) Prevent a transfer of funds from the account of the consenting, senior, or
2 vulnerable adult to an account owned wholly or partially by another person;
3 (5) Refuse to comply with instructions given to the financial institution by an agent or
4 a person acting for or with an agent under a power of attorney signed or purported
5 to have been signed by the consenting, senior, or vulnerable adult; or
6 (6) Prevent the designation or change the designation of beneficiaries to receive any
7 property, benefit, or contract rights for a consenting, senior, or vulnerable adult at
8 death.

9 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

10 Neither a financial institution, nor an employee of the institution is required to act
11 under section 2 of this Act when provided with information alleging that financial
12 exploitation may have occurred, may have been attempted, is occurring, or is being
13 attempted, but may use discretion to determine whether or not to act, based on the
14 information available to the institution or the employee at the time.

15 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

16 A financial institution or an employee of a financial institution may notify any third
17 party reasonably associated with a consenting, senior, or vulnerable adult, if the institution
18 or employee reasonably believes that financial exploitation of the adult may have
19 occurred, may have been attempted, is occurring, or is being attempted.

20 A financial institution or an employee of a financial institution may choose not to
21 notify any third party reasonably associated with a consenting, senior, or vulnerable adult
22 of suspected financial exploitation of the adult, if the institution or employee reasonably
23 believes the third party is, may be, or may have been engaged in the financial exploitation
24 of the adult, or if requested to refrain from making a notification by a law enforcement
25 agency on the grounds that the notification could interfere with a law enforcement
26 investigation.

27 For purposes of this section, a third party reasonably associated with a consenting,
28 senior, or vulnerable adult means:

- 29 (1) A parent, spouse, adult child, sibling, or other known family member or close
30 associate of the adult;
31 (2) An authorized contact provided by the adult to the financial institution;
32 (3) A co-owner, additional authorized signatory, or beneficiary on an adult's account;

1 (4) An attorney in fact, trustee, conservator, guardian, or other fiduciary who has been
2 selected by the adult, a court, or a third party, to manage some or all of the
3 financial affairs of the adult; and

4 (5) An attorney known to represent or have represented the adult.

5 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

6 Except as otherwise provided in this section, the authority granted the financial
7 institution under section 2 of this Act expires upon the earliest of:

8 (1) Thirty business days after the date on which the financial institution first acted
9 under section 2;

10 (2) When the financial institution is satisfied that the transaction or act will not result
11 in financial exploitation of the consenting, senior, or vulnerable adult; or

12 (3) Termination by an order of a court of competent jurisdiction.

13 Unless otherwise directed by order of a court, a financial institution may extend
14 the duration of authority under this section based on a reasonable belief that the financial
15 exploitation of a consenting, senior, or vulnerable adult may continue to occur or continue
16 to be attempted.

17 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

18 A financial institution and its bank holding company, if any, and any employees,
19 agents, officers, and directors of the financial institution and its bank holding company, if
20 any, are immune from any civil, criminal, or administrative liability that may otherwise
21 exist:

22 (1) For delaying or refusing to execute a transaction, withdrawal, or disbursement, in
23 accordance with this chapter;

24 (2) For not delaying or refusing to execute a transaction, withdrawal, or disbursement
25 in accordance with this chapter; and

26 (3) For actions taken in furtherance of determinations made in accordance with this
27 chapter.

28 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 51A:**

29 Notwithstanding any other law, the refusal by a financial institution to engage in a
30 transaction in accordance with this chapter does not constitute the wrongful dishonor of
31 an item under § 57A-4-402.