

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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SENATE BILL 140\*

Short Title: Financial Exploitation of Older Adults. (Public)

Sponsors: Senators Bingham (Primary Sponsor); Apodaca, Barefoot, Barringer, Brock, Clark, D. Davis, Hise, Hunt, Jackson, Jenkins, McLaurin, Newton, Pate, Rabin, and Randleman.

Referred to: Health Care.

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE RECOGNITION, REPORTING, AND PROSECUTION OF THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT OLDER ADULTS, AND TO CONTINUE THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS, AS RECOMMENDED BY THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-112.2 reads as rewritten:

**"§ 14-112.2. Exploitation of an elder adult or disabled adult.**

(a) The following definitions apply in this section:

(1) Disabled adult. – A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(2) Elder adult. – A person 60 years of age or ~~older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.~~ older.

(b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an elder adult or disabled adult, or (ii) who has a business relationship with an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder adult or disabled adult.

(c) It is unlawful for a ~~person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent,~~ person to knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of that person's lawful authority as the agent for the elder adult or disabled adult.

(d) A violation of subsection (b) of this section is punishable as follows:



- 1 (1) If the funds, assets, or property involved in the exploitation of the elderly
- 2 person or disabled adult is valued at one hundred thousand dollars
- 3 (\$100,000) or more, then the offense is a Class F felony.
- 4 (2) If the funds, assets, or property involved in the exploitation of the elderly
- 5 person or disabled adult is valued at twenty thousand dollars (\$20,000) or
- 6 more but less than one hundred thousand dollars (\$100,000), then the
- 7 offense is a Class G felony.
- 8 (3) If the funds, assets, or property involved in the exploitation of the elderly
- 9 person or disabled adult is valued at less than twenty thousand dollars
- 10 (\$20,000), then the offense is a Class H felony.
- 11 (e) A violation of subsection (c) of this section is punishable as follows:
- 12 (1) If the funds, assets, or property involved in the exploitation of the elderly
- 13 person or disabled adult is valued at one hundred thousand dollars
- 14 (\$100,000) or more, then the offense is a Class G felony.
- 15 (2) If the funds, assets, or property involved in the exploitation of the elderly
- 16 person or disabled adult is valued at twenty thousand dollars (\$20,000) or
- 17 more but less than one hundred thousand dollars (\$100,000), then the
- 18 offense is a Class H felony.
- 19 (3) If the funds, assets, or property involved in the exploitation of the elderly
- 20 person or disabled adult is valued at less than twenty thousand dollars
- 21 (\$20,000), then the offense is a Class I felony."

22 **SECTION 2.(a)** G.S. 53B-4 is amended by adding a new subdivision to read as  
 23 follows:

24 **"§ 53B-4. Access to financial records.**

25 Notwithstanding any other provision of law, no government authority may have access to a  
 26 customer's financial record held by a financial institution unless the financial record is  
 27 described with reasonable specificity and access is sought pursuant to any of the following:

28 ...

- 29 (13) A written notice of investigation of suspected financial exploitation of an
- 30 adult delivered to the financial institution by a county department of social
- 31 services director investigating a credible report of financial exploitation of a
- 32 disabled adult, pursuant to G.S. 108A-106.1, or by a law enforcement
- 33 agency investigating possible financial exploitation of an older adult,
- 34 pursuant to G.S. 108A-116. Delivery of the written notice shall be effected
- 35 by hand, via certified mail, return receipt requested, or through a designated
- 36 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2). The recipient
- 37 of the written notice shall be the financial institution's local branch
- 38 vice-president, its local branch manager or assistant branch manager, or the
- 39 agent for service of process listed by the financial institution with the North
- 40 Carolina Secretary of State."

41 **SECTION 2.(b)** G.S. 53B-9(a) reads as rewritten:

42 **"§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

43 (a) Upon receipt of a notice pursuant to G.S. 53B-4(13) or upon service of a subpoena  
 44 or court order pursuant to G.S. 53B-4(1), (3), (9), or (11) and receipt of certification pursuant to  
 45 G.S. 53B-5(5), a financial institution shall locate the financial records requested and prepare to  
 46 make them available to the government authority seeking access to them. Upon receipt of  
 47 notice that a customer has challenged the notice of investigation, ~~court order~~ order, or  
 48 subpoena, the financial institution may suspend its efforts to make the records available until  
 49 after final disposition of the challenge."

50 **SECTION 3.** Article 6 of Chapter 108A of the General Statutes is amended by  
 51 adding a new section to read as follows:

1 **"§ 108A-106.1. Production of customers' financial records upon request in cases of**  
2 **suspected financial exploitation; immunity; records may not be used against**  
3 **account owner.**

4 (a) A financial institution shall promptly provide to the director the financial records of  
5 a disabled adult customer or depositor if the director or the director's designee has delivered to  
6 the financial institution a signed, written notice on department letterhead identifying the  
7 disabled adult and specifying all of the following:

8 (1) The director's department is investigating a credible report that the adult is  
9 being or has been financially exploited due to his or her disability.

10 (2) The disabled adult's financial records are needed in order to substantiate or  
11 evaluate the report.

12 (3) Time is of the essence in order to prevent further exploitation of that adult.

13 (4) All produced copies of the adult's financial records shall be kept confidential  
14 by the county department of social services unless required by court rules to  
15 be disclosed to a party to a court proceeding, or introduced and admitted into  
16 evidence in an open court proceeding.

17 (b) No financial institution or law enforcement agency, or officer or employee thereof,  
18 who provides, seeks, or obtains financial records or any other information in accordance with  
19 this section, or provides testimony in any judicial proceeding based upon the contents thereof,  
20 shall be held liable in any action if they acted in good faith.

21 (c) No customer shall be subject to indictment, criminal prosecution, criminal  
22 punishment, or criminal penalty by reason of or on account of anything disclosed by a financial  
23 institution pursuant to this section, nor may any information obtained through such disclosure  
24 be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding  
25 the foregoing, information obtained may be used against a person who is a joint account owner  
26 accused of financial exploitation of an older adult joint account holder, but solely for criminal  
27 or civil proceedings directly related to the alleged financial exploitation of the older adult joint  
28 account holder.

29 (d) As used in this section, the terms "customer," "financial exploitation," "financial  
30 institution," "financial record," and "promptly" have the same meanings as defined in  
31 G.S. 108A-113."

32 **SECTION 4.** Chapter 108A of the General Statutes is amended by adding a new  
33 Article to read as follows:

34 "Article 6A.

35 "Protection of Older Adults From Financial Exploitation.

36 **"§ 108A-112. Legislative intent and purpose.**

37 Determined to fight the growing problem of fraud and financial exploitation targeting older  
38 adults in North Carolina, the General Assembly enacts this Article to facilitate the collection of  
39 records needed to investigate and prosecute such incidents.

40 **"§ 108A-113. Definitions.**

41 As used in this Article, the following definitions apply:

42 (1) Customer. – A person who has transacted business with a financial  
43 institution or has used the services offered by a financial institution.

44 (2) Financial exploitation. – The illegal or improper use of an older adult's  
45 financial resources for another's profit or pecuniary advantage.

46 (3) Financial institution. – A banking corporation, trust company, savings and  
47 loan association, credit union, or other entity principally engaged in lending  
48 money or receiving or soliciting money on deposit.

49 (4) Financial record. – An original of, a copy of, or information derived from a  
50 record held by a financial institution pertaining to a customer's relationship

1 with the financial institution and identified with or identifiable with the  
2 customer.

3 (6) Law enforcement agency. – A duly accredited state or local government  
4 agency possessing authority to enforce the criminal statutes of North  
5 Carolina.

6 (7) Older adult. – An individual 60 years of age or older.

7 (8) Promptly. – As soon as practicable, with reasonable allowance to be made  
8 for the time required to retrieve older data or records that are not readily or  
9 immediately retrievable due to their current storage media.

10 **§ 108A-114. Financial institutions encouraged to maintain list of contacts in case of**  
11 **financial exploitation.**

12 All financial institutions are encouraged, but not required, to offer to its older adult  
13 customers the opportunity to submit, and periodically update, a list of persons that the older  
14 adult would like the bank to contact in case of suspected financial exploitation of the older  
15 adult.

16 **§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

17 (a) Any financial institution, or officer or employee thereof, having reasonable cause to  
18 believe that an older adult is the victim or target of financial exploitation shall report such  
19 information to both of the following:

20 (1) Persons on the list provided by the customer under G.S. 108A-114, if such a  
21 list has been provided by the customer. The financial institution may choose  
22 not to contact persons on the provided list if the bank suspects that those  
23 persons are financially exploiting the older adult.

24 (2) The appropriate local law enforcement agency.

25 (b) The report may be made orally or in writing. The report shall include the name and  
26 address of the older adult, the nature of the suspected financial exploitation, and any other  
27 pertinent information.

28 (c) No financial institution, or officer or employee thereof, who makes a report under  
29 this section shall be held liable in any action if they acted in good faith.

30 **§ 108A-116. Production of customers' financial records upon request in cases of**  
31 **suspected financial exploitation; immunity; records may not be used against**  
32 **account owner.**

33 (a) A financial institution promptly shall provide to the head of a law enforcement  
34 agency, or his or her designated agent, the financial records of an older adult customer or  
35 depositor, provided that the head of a law enforcement agency or his or her designated agent  
36 provides to the financial institution a signed, written notice of investigation on agency  
37 letterhead identifying the older adult customer, providing the agency's investigative file number  
38 on the matter, and specifying all of the following:

39 (1) The law enforcement agency is investigating, pursuant to the law  
40 enforcement agency's statutory authority, a credible report that the older  
41 adult is being or has been financially exploited.

42 (2) The older adult's financial records are needed in order to substantiate or  
43 evaluate the report.

44 (3) Time is of the essence in order to prevent further exploitation of that older  
45 adult.

46 (4) All produced copies of the older adult's financial records, as well as any  
47 information obtained pursuant to the duty to report found in G.S. 108A-114,  
48 shall be kept confidential by the law enforcement agency unless required by  
49 court rules to be disclosed to a party to a court proceeding, or introduced and  
50 admitted into evidence in an open court proceeding.

1       (b) No financial institution or law enforcement agency, or officer or employee thereof,  
2 who provides, seeks, or obtains financial records or any other information in accordance with  
3 this section, or provides testimony in any judicial proceeding based upon the contents thereof,  
4 shall be held liable in any action if they acted in good faith.

5       (c) No customer shall be subject to indictment, criminal prosecution, criminal  
6 punishment, or criminal penalty by reason of or on account of anything disclosed by a financial  
7 institution pursuant to this section, nor may any information obtained through such disclosure  
8 be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding  
9 the foregoing, information obtained may be used against a person who is a joint account owner  
10 accused of financial exploitation of an older adult joint account holder, but solely for criminal  
11 or civil proceedings directly related to the alleged financial exploitation of the older adult joint  
12 account holder."

13               **SECTION 5.(a)** Section 1(c) of S.L. 2011-189 reads as rewritten:

14               **"SECTION 1.(c)** The Task Force shall make ~~an interim~~ a report to the North Carolina  
15 Study Commission on Aging on or before November 1, 2011, and a ~~final~~ report including  
16 findings, recommendations, and draft legislation to the Joint Legislative Oversight Committee  
17 on Health and Human Services on or before ~~October 1, 2012.~~ February 1, 2013. The Task  
18 Force shall report to the Joint Legislative Oversight Committee on Health and Human Services  
19 prior to the 2014 Regular Session on the efficacy of any of the Task Force's recommendations  
20 that are adopted. The Task Force shall terminate on May 1, 2015, or upon the filing of its final  
21 report, whichever occurs first."

22               **SECTION 5.(b)** The Consumer Protection Division, Department of Justice, shall  
23 add the following to its list of approved associations represented on the Task Force:

24               (1) The North Carolina Credit Union League.

25               (2) An association representing non-depository financial institutions.

26               **SECTION 6.** Sections 1, 2, 3, and 4 of this act become effective on the first day of  
27 a month that is six months after this act becomes law. The remainder of this act is effective  
28 when it becomes law.