

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 140*
Health Care Committee Substitute Adopted 3/21/13

Short Title: Financial Exploitation of Older Adults.

(Public)

Sponsors:

Referred to:

February 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE RECOGNITION, REPORTING, AND PROSECUTION OF
3 THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT OLDER ADULTS
4 AND TO CONTINUE THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS,
5 AS RECOMMENDED BY THE TASK FORCE ON FRAUD AGAINST OLDER
6 ADULTS.

7 The General Assembly of North Carolina enacts:

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

9 "§ 14-112.2. Exploitation of an ~~elder~~older adult or disabled adult.

10 (a) The following definitions apply in this section:

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

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

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

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

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

34 (1) If the funds, assets, or property involved in the exploitation of the ~~elderly~~
35 ~~person-older~~ adult or disabled adult is valued at one hundred thousand
36 dollars (\$100,000) or more, then the offense is a Class F felony.



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

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

21 **"§ 53B-4. Access to financial records.**

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

25 ...

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

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

39 **"§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

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

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

49 **"§ 108A-106.1. Production of customers' financial records upon request in cases of**
 50 **suspected financial exploitation; immunity; records may not be used against**
 51 **account owner.**

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

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

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

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

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

13 (c) No financial institution or county department of social services, or officer or
14 employee thereof, who provides, seeks, or obtains financial records or any other information in
15 accordance with this section, or provides testimony in any judicial proceeding based upon the
16 contents thereof, shall be held liable in any action if they acted in good faith.

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

25 (e) As used in this section, the terms "customer," "financial exploitation," "financial
26 institution," "financial record," and "promptly" have the same meanings as defined in
27 G.S. 108A-113."

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

30 "Article 6A.

31 "Protection of Older Adults From Financial Exploitation.

32 **"§ 108A-112. Legislative intent and purpose.**

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

36 **"§ 108A-113. Definitions.**

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

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

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

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

45 (4) Financial record. – An original of, a copy of, or information derived from a
46 record held by a financial institution pertaining to a customer's relationship
47 with the financial institution and identified with or identifiable with the
48 customer.

49 (5) Law enforcement agency. – A duly accredited State or local government
50 agency possessing authority to enforce the criminal statutes of North
51 Carolina.

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

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

5 **§ 108A-114. Financial institutions encouraged to maintain list of contacts in case of**
6 **financial exploitation.**

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

11 **§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

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

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

19 (2) The appropriate local law enforcement agency.

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

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

25 **§ 108A-116. Production of customers' financial records upon request in cases of**
26 **suspected financial exploitation; immunity; records may not be used against**
27 **account owner.**

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

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

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

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

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

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

49 (d) No customer shall be subject to indictment, criminal prosecution, criminal
50 punishment, or criminal penalty by reason of or on account of anything disclosed by a financial
51 institution pursuant to this section, nor may any information obtained through such disclosure

1 be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding
2 the foregoing, information obtained may be used against a person who is a joint account owner
3 accused of financial exploitation of an older adult joint account holder, but solely for criminal
4 or civil proceedings directly related to the alleged financial exploitation of the older adult joint
5 account holder."

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

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

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

17 (1) The North Carolina Credit Union League.

18 (2) An association representing nondepository financial institutions.

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