

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 140\*  
Health Care Committee Substitute Adopted 3/21/13  
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House Committee Substitute Favorable 7/10/13

Short Title: Financial Exploitation of Older Adults.

(Public)

Sponsors:

Referred to:

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 DISABLED OR 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-older 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-Older adult. – A person 60 years of age or elder 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-older adult or disabled adult, or (ii) who has a business relationship with an elder-older adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an elder-older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder-older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder-older 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-older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder-older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder-older 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-older 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—older adult~~ or disabled adult is valued at one hundred thousand  
 3 dollars (\$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—older adult~~ or disabled adult is valued at twenty thousand dollars  
 6 (\$20,000) or more but less than one hundred thousand dollars (\$100,000),  
 7 then the offense is a Class G felony.  
 8 (3) If the funds, assets, or property involved in the exploitation of the ~~elderly~~  
 9 ~~person—older adult~~ or disabled adult is valued at less than twenty thousand  
 10 dollars (\$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—older adult~~ or disabled adult is valued at one hundred thousand  
 14 dollars (\$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—older adult~~ or disabled adult is valued at twenty thousand dollars  
 17 (\$20,000) or more but less than one hundred thousand dollars (\$100,000),  
 18 then the offense is a Class H felony.  
 19 (3) If the funds, assets, or property involved in the exploitation of the ~~elderly~~  
 20 ~~person—older adult~~ or disabled adult is valued at less than twenty thousand  
 21 dollars (\$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 subpoena delivered to the financial institution pursuant to G.S. 108A-116  
 30 by (i) a county department of social services director investigating a credible  
 31 report of financial exploitation of a disabled adult or (ii) a law enforcement  
 32 agency investigating a credible report of financial exploitation of a disabled  
 33 adult or older adult."

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

35 "**§ 53B-9. Duty of financial institutions; fee; limitation of liability.**

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

43 (b) Upon receipt of access to financial records pursuant to G.S. 53B-4(1), (3), (9), ~~or~~  
 44 ~~(11), (11), or (13),~~ a government authority shall pay the financial institution that provided the  
 45 financial records a fee for costs directly incurred in assembling and delivering the financial  
 46 records. The fee shall be at the rate established pursuant to the Right to Financial Privacy Act §  
 47 1115(a), 12 U.S.C. § 3415, and ~~12 C.F.R. 219.12 C.F.R. 219,~~ unless waived, in whole or in  
 48 part, by the financial institution.

49 (c) A financial institution that discloses a financial record pursuant to this Chapter in  
 50 good faith reliance upon certification by a government authority pursuant to G.S. 53B-5(5) is  
 51 not liable for damages resulting from the disclosure."

1 SECTION 3. G.S. 108A-14(a) is amended by adding a new subdivision to read as  
2 follows:

3 **"§ 108A-14. Duties and responsibilities.**

4 (a) The director of social services shall have the following duties and responsibilities:

5 ...

6 (14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled  
7 adults and to take appropriate action as required by the Protection of the  
8 Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this  
9 Chapter, to protect these adults.

10 (15) To receive and evaluate reports of financial exploitation of disabled adults,  
11 to investigate credible reports of financial exploitation under Article 6A of  
12 this Chapter, and to take appropriate action to protect these adults."

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

15 "Article 6A.

16 "Protection of Disabled and Older Adults From Financial Exploitation.

17 **"§ 108A-112. Legislative intent and purpose.**

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

21 **"§ 108A-113. Definitions.**

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

23 (1) Customer. – A person who is a present or former holder of an account with a  
24 financial institution.

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

28 (3) Financial exploitation. – The illegal or improper use of a disabled adult's or  
29 older adult's financial resources for another's profit or pecuniary advantage.

30 (4) Financial institution. – A banking corporation, trust company, savings and  
31 loan association, credit union, or other entity principally engaged in lending  
32 money or receiving or soliciting money on deposit.

33 (5) Financial record. – An original of, a copy of, or information derived from a  
34 record held by a financial institution pertaining to a customer's relationship  
35 with the financial institution and identified with or identifiable with the  
36 customer.

37 (6) Law enforcement agency. – Any duly accredited State or local government  
38 agency possessing authority to enforce the criminal statutes of North  
39 Carolina.

40 (7) Investigating entity. – A law enforcement agency investigating alleged  
41 financial exploitation of a disabled adult or an older adult, or a county  
42 department of social services investigating alleged financial exploitation of a  
43 disabled adult.

44 (8) Older adult. – An individual 60 years of age or older.

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

48 **"§ 108A-114. Financial institutions encouraged to offer disabled adult and older adult**  
49 **customers the opportunity to submit a list of trusted persons to be contacted in**  
50 **case of financial exploitation.**

1 All financial institutions are encouraged, but not required, to offer to disabled adult and  
2 older adult customers the opportunity to submit, and periodically update, a list of persons that  
3 the disabled adult or older adult customer would like the financial institution to contact in case  
4 of suspected financial exploitation of the disabled adult or older adult customer. No financial  
5 institution, or officer or employee thereof, who acts in good faith in offering to its customer the  
6 opportunity to submit and update a list of such contact persons may be held liable in any action  
7 for doing so.

8 **"§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

9 (a) Any financial institution, or officer or employee thereof, having reasonable cause to  
10 believe that a disabled adult or older adult is the victim or target of financial exploitation shall  
11 report such information to the following:

- 12 (1) Persons on the list provided by the customer under G.S. 108A-114, if such a  
13 list has been provided by the customer. The financial institution may choose  
14 not to contact persons on the provided list if the financial institution suspects  
15 that those persons are financially exploiting the disabled adult or older adult.
- 16 (2) The appropriate local law enforcement agency.
- 17 (3) The appropriate county department of social services, if the customer is a  
18 disabled adult.

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

22 (c) No financial institution, or officer or employee thereof, who acts in good faith in  
23 making a report under this section may be held liable in any action for doing so.

24 **"§ 108A-116. Production of customers' financial records in cases of suspected financial**  
25 **exploitation; immunity; records may not be used against account owner.**

26 (a) An investigating entity may, under the conditions specified in this section, obtain a  
27 subpoena directing a financial institution to provide to the investigating entity the financial  
28 records of a disabled adult or older adult customer. The subpoena may be issued by any judge  
29 of the superior court, judge of the district court, or magistrate in the county of residence of the  
30 disabled adult or older adult customer whose financial records are being subpoenaed, upon  
31 finding that all of the following conditions are met:

- 32 (1) The investigating entity is investigating, pursuant to the investigating entity's  
33 statutory authority, a credible report that the disabled adult or older adult is  
34 being or has been financially exploited.
- 35 (2) The disabled adult's or older adult's financial records are needed in order to  
36 substantiate or evaluate the report.
- 37 (3) Time is of the essence in order to prevent further exploitation of that  
38 disabled adult or older adult.

39 (b) Delivery of the subpoena may be effected by hand, via certified mail, return receipt  
40 requested, or through a designated delivery service authorized pursuant to 26 U.S.C. §  
41 7502(f)(2) and may be addressed to the financial institution's local branch or office vice  
42 president, its local branch or office manager or assistant branch or office manager, or the agent  
43 for service of process listed by the financial institution with the North Carolina Secretary of  
44 State or, if there is none, with the agent for service of process listed by the financial institution  
45 in any state in which it is domiciled.

46 (c) A financial institution shall promptly provide to the head of an investigating entity,  
47 or his or her designated agent, the financial records of a disabled adult or older adult customer  
48 upon receipt of a subpoena delivered pursuant to subsection (b) of this section identifying the  
49 disabled adult or older adult customer.

50 (d) All produced copies of the disabled adult's or older adult's financial records, as well  
51 as any information obtained pursuant to the duty to report found in G.S. 108A-115, shall be

1 kept confidential by the investigating entity unless required by court rules to be disclosed to a  
2 party to a court proceeding or introduced and admitted into evidence in an open court  
3 proceeding.

4 (e) No financial institution or investigating entity, or officer or employee thereof, who  
5 acts in good faith in providing, seeking, or obtaining financial records or any other information  
6 in accordance with this section, or in providing testimony in any judicial proceeding based  
7 upon the contents thereof, may be held liable in any action for doing so.

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

16 **"§ 108A-117. Notice to customer; delayed notice.**

17 (a) Upon the issuance of a subpoena pursuant to G.S. 108A-116, the investigating entity  
18 shall immediately provide the customer with written notice of its action by first-class mail to  
19 the customer's last known address, unless an order for delayed notice is obtained pursuant to  
20 subsection (b) of this section. The notice shall be sufficient to inform the customer of the name  
21 of the investigating entity that has obtained the subpoena, the financial records subject to  
22 production pursuant to the subpoena, and the purpose of the investigation.

23 (b) An investigating entity may include in its application for a subpoena pursuant to  
24 G.S. 108A-116 a request for an order delaying the customer notice required pursuant to  
25 subsection (a) of this section. The judge or magistrate issuing the subpoena may order a  
26 delayed notice in accordance with subsection (c) of this section if it finds, based on affidavit or  
27 oral testimony under oath or affirmation before the issuing judge or magistrate, that all of the  
28 following conditions are met:

29 (1) The investigating entity is investigating a credible report that the adult is  
30 being or has been financially exploited.

31 (2) There is reason to believe that the notice will result in at least one of the  
32 following:

33 a. Endangering the life or physical safety of any person.

34 b. Flight from prosecution.

35 c. Destruction of or tampering with evidence.

36 d. Intimidation of potential witnesses.

37 e. Serious jeopardy to an investigation or official proceeding.

38 f. Undue delay of a trial or official proceeding.

39 (c) Upon making the findings required in subsection (b) of this section, the judge or  
40 magistrate shall enter an ex parte order granting the requested delay for a period not to exceed  
41 30 days. If the court finds there is reason to believe that the notice may endanger the life or  
42 physical safety of any person, the court may order that the delay be for a period not to exceed  
43 180 days. An order delaying notice shall direct that:

44 (1) The financial institution not disclose to any person the existence of the  
45 investigation, of the subpoena, or of the fact that the customer's financial  
46 records have been provided to the investigating entity for the duration of the  
47 period of delay authorized in the order;

48 (2) The investigating entity deliver a copy of the order to the financial institution  
49 along with the subpoena that is delivered pursuant to G.S. 108-116(b); and

50 (3) The order be sealed until otherwise ordered by the judge or magistrate.

1       (d) Upon application by the investigating entity, further extensions of the delay of  
2 notice may be granted by order of a judge or magistrate in the county of residence of the  
3 disabled adult or older adult customer whose financial records are being subpoenaed, upon a  
4 finding of the continued existence of the conditions set forth in subdivisions (1) and (2) of  
5 subsection (b) of this section, and subject to the requirements of subsection (c) of this section.  
6 If the initial delay was granted for a period not to exceed 30 days, the delay may be extended  
7 by additional periods of up to 30 days each and the total delay in notice granted under this  
8 section shall not exceed 90 days. If the initial delay was granted for a period not to exceed 180  
9 days, the delay may be extended by additional periods of up to 180 days each and may continue  
10 to be extended until the court finds the notice would no longer endanger the life or physical  
11 safety of any person.

12       (e) Upon the expiration of the period of delay of notice granted under this section,  
13 including any extensions thereof, the customer shall be served with a copy of the notice  
14 required by subsection (a) of this section."

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

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

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

- 26       (1) The North Carolina Credit Union League.
- 27       (2) An association representing nondepository financial institutions.
- 28       (3) The North Carolina Bar Association, whose participating representatives  
29       shall include attorneys involved in protecting the privacy and property  
30       interests of disabled and older adults.

31       **SECTION 6.** Section 1 of this act becomes effective December 1, 2013, and  
32 applies to offenses committed on or after that date. Sections 2, 3, and 4 of this act become  
33 effective December 1, 2013. The remainder of this act is effective when it becomes law.