

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 140
RATIFIED BILL

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~~65 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-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) If the funds, assets, or property involved in the exploitation of the ~~elderly person-older adult~~ elder-older adult or disabled adult is valued at one hundred thousand dollars (\$100,000) or more, then the offense is a Class F felony.
- (2) If the funds, assets, or property involved in the exploitation of the ~~elderly person-older adult~~ elder-older adult or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class G felony.
- (3) If the funds, assets, or property involved in the exploitation of the ~~elderly person-older adult~~ elder-older adult or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class H felony.

(e) A violation of subsection (c) of this section is punishable as follows:

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



- (2) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class H felony.
- (3) If the funds, assets, or property involved in the exploitation of the ~~elderly person~~ older adult or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class I felony."

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

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

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

- ...
- (13) A subpoena delivered to the financial institution pursuant to G.S. 108A-116 by (i) a county department of social services director investigating a credible report of financial exploitation of a disabled adult or (ii) a law enforcement agency investigating a credible report of financial exploitation of a disabled adult or older adult."

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

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

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

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

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

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

"§ 108A-14. Duties and responsibilities.

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

- ...
- (14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults.
- (15) To receive and evaluate reports of financial exploitation of disabled adults, to investigate credible reports of financial exploitation under Article 6A of this Chapter, and to take appropriate action to protect these adults."

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

"Article 6A.

"Protection of Disabled and Older Adults From Financial Exploitation.

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

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

"§ 108A-113. Definitions.

As used in this Article, the following definitions apply:

- (1) Customer. – A person who is a present or former holder of an account with a financial institution.
- (2) Disabled adult. – An individual 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).
- (3) Financial exploitation. – The illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage.
- (4) Financial institution. – A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.
- (5) Financial record. – An original of, a copy of, or information derived from a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.
- (6) Law enforcement agency. – Any duly accredited State or local government agency possessing authority to enforce the criminal statutes of North Carolina.
- (7) Investigating entity. – A law enforcement agency investigating alleged financial exploitation of a disabled adult or an older adult, or a county department of social services investigating alleged financial exploitation of a disabled adult.
- (8) Older adult. – An individual 65 years of age or older.
- (9) Promptly. – As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media.

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

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

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

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

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

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

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

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

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

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

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

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

(d) All produced copies of the disabled adult's or older adult's financial records, as well as any information obtained pursuant to the duty to report found in G.S. 108A-115, shall be kept confidential by the investigating entity unless required by court rules to be disclosed to a party to a court proceeding or introduced and admitted into evidence in an open court proceeding.

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

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

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

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

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

- (1) The investigating entity is investigating a credible report that the adult is being or has been financially exploited.
- (2) There is reason to believe that the notice will result in at least one of the following:
 - a. Endangering the life or physical safety of any person.
 - b. Flight from prosecution.
 - c. Destruction of or tampering with evidence.
 - d. Intimidation of potential witnesses.
 - e. Serious jeopardy to an investigation or official proceeding.
 - f. Undue delay of a trial or official proceeding.

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

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

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

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

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

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

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

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

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

(1) The North Carolina Credit Union League.

(2) An association representing nondepository financial institutions.

(3) The North Carolina Bar Association, whose participating representatives shall include attorneys involved in protecting the privacy and property interests of disabled and older adults.

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

In the General Assembly read three times and ratified this the 17th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2013