

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 140*
PROPOSED COMMITTEE SUBSTITUTE S140-PCS35187-SH-1

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.



* S 1 4 0 - P C S 3 5 1 8 7 - S H - 1 *

- 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 (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.