

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 140*
Health Care Committee Substitute Adopted 3/21/13
PROPOSED COMMITTEE SUBSTITUTE S140-PCS35310-TG-18

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 DISABLED OR
4 OLDER ADULTS AND TO CONTINUE THE TASK FORCE ON FRAUD AGAINST
5 OLDER ADULTS, AS RECOMMENDED BY THE TASK FORCE ON FRAUD
6 AGAINST OLDER 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 ~~older 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:



* S 1 4 0 - P C S 3 5 3 1 0 - T G - 1 8 *

- 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 written notice of investigation of suspected financial exploitation of an
 30 adult delivered to the financial institution pursuant to G.S. 108A-116 by (i) a
 31 county department of social services director investigating a credible report
 32 of financial exploitation of a disabled adult or (ii) a law enforcement agency
 33 investigating a credible report of financial exploitation of a disabled adult or
 34 older adult. Delivery of the written notice may be effected by hand, via
 35 certified mail, return receipt requested, or through a designated delivery
 36 service authorized pursuant to 26 U.S.C. § 7502(f)(2) and may be addressed
 37 to the financial institution's local branch or office vice president, its local
 38 branch or office manager or assistant branch or office manager, or the agent
 39 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 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 subpoena,
 48 the financial institution may suspend its efforts to make the records available until after final
 49 disposition of the challenge.

50 (b) Upon receipt of access to financial records pursuant to G.S. 53B-4(1), (3), (9), ~~or~~
 51 ~~(11)~~, (11) or (13), a government authority shall pay the financial institution that provided the

1 financial records a fee for costs directly incurred in assembling and delivering the financial
2 records. The fee shall be at the rate established pursuant to the Right to Financial Privacy Act §
3 1115(a), 12 U.S.C. § 3415, and ~~12 C.F.R. 219~~ 12 C.F.R. 219, unless waived, in whole or in
4 part, by the financial institution.

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

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

10 **"§ 108A-14. Duties and responsibilities.**

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

12 ...

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

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

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

22 "Article 6A.

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

24 **"§ 108A-112. Legislative intent and purpose.**

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

28 **"§ 108A-113. Definitions.**

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

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

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

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

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

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

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

47 (7) Investigating entity. – A law enforcement agency investigating alleged
48 financial exploitation of a disabled adult or an older adult, or a county
49 department of social services investigating alleged financial exploitation of a
50 disabled adult.

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

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

4 **"§ 108A-114. Financial institutions encouraged to maintain list of contacts in case of**
5 **financial exploitation.**

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

10 **"§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

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

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

18 (2) The appropriate local law enforcement agency.

19 (3) The appropriate county department of social services, if the customer is a
20 disabled adult.

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

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

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

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

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

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

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

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

47 (c) No financial institution or investigating entity, or officer or employee thereof, who
48 provides, seeks, or obtains financial records or any other information in accordance with this
49 section, or provides testimony in any judicial proceeding based upon the contents thereof, may
50 be held liable in any action if they acted in good faith.

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

9 **"§ 108A-117. Notice to customer; delayed notice.**

10 (a) Within 180 days after an investigating entity obtains access to the financial records
11 of a disabled adult or older adult customer pursuant to the authority contained in
12 G.S. 108A-116, it shall provide the customer with written notice of its action by first-class mail
13 to the customer's last known address, unless an order for delayed notice is obtained pursuant to
14 this section. The notice shall be sufficient to inform the customer of the name of the
15 investigating entity that accessed the records, the financial records accessed, and the purpose of
16 the investigation.

17 (b) Upon application of an investigating entity, a customer notice pursuant to this
18 section may be delayed by order of an appropriate court if the judge finds all of the following:

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

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

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

24 b. Flight from prosecution.

25 c. Destruction of or tampering with evidence.

26 d. Intimidation of potential witnesses.

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

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

29 (c) An application for delay under subsection (b) of this section must be made with
30 reasonable specificity.

31 (d) If the court makes the findings required in subsection (b) of this section, it shall
32 enter an ex parte order granting the requested delay for a period not to exceed 180 days and an
33 order prohibiting the financial institution from disclosing that records have been obtained. If the
34 court finds that there is reason to believe that the notice may endanger the life or physical
35 safety of any person, the court may specify that the delay be indefinite.

36 (e) Further extensions of the delay of notice of up to 90 days each may be granted by
37 the court upon application by the investigating entity.

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

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

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

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

- 1 (1) The North Carolina Credit Union League.
2 (2) An association representing nondepository financial institutions.
3 **SECTION 6.** Section 1 of this act becomes effective December 1, 2013, and
4 applies to offenses committed on or after that date. Sections 2, 3, and 4 of this act become
5 effective October 1, 2013. The remainder of this act is effective when it becomes law.