



Financial Exploitation of Older Adults and Disabled Adults: An Overview of North Carolina Law

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The North Carolina General Assembly recently took action to expand and amend the state’s legal framework for addressing financial exploitation of older adults and disabled adults.¹ The laws on this topic involve several areas—criminal law, social services law, and financial privacy law. Using the following seven questions, this bulletin will describe how the new and revised laws will work together.

1. What is financial exploitation?
2. Who is protected by North Carolina’s financial exploitation laws?
3. Does state law require reporting of financial exploitation?
4. What will happen after law enforcement receives a report of suspected financial exploitation of an older adult or a disabled adult?
5. What will happen after a department of social services (DSS) receives a report of suspected financial exploitation of a disabled adult?
6. How may DSS officials obtain access to financial records when investigating a report of financial exploitation of a disabled adult?
7. Must DSS protect the confidentiality of the financial records it obtains pursuant to a subpoena?

1. What is financial exploitation?

Financial exploitation is defined in state law as the “illegal or improper use of a disabled adult’s or older adult’s financial resources for another’s profit or pecuniary advantage.”² According to the U.S. Department of Justice, “over 5% of older Americans will be financially exploited

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1. Session Law (hereinafter S.L.) 2013-337; S.L. 2013-203; S.L. 2014-115, § 44.

2. Section 108A-113 of the North Carolina General Statutes (hereinafter G.S.). See also G.S. 108A-101 (defining *exploitation* in the context of abuse, neglect, and exploitation of disabled adults to mean

by a family member, and over 8% will be the victims of consumer fraud.”³ The agency reports that older adults in the United States may lose more than “\$2.9 billion annually from financial exploitation.”⁴ In addition to the financial loss, victims may experience other collateral consequences, such as “loss of independence, decreased health, and psychological distress, all of which culminate in a diminished quality of life.”⁵ A perpetrator of financial exploitation may be a family member, caregiver, spouse, friend, romantic partner, financial advisor or tax preparer, or stranger.⁶

2. Who is protected by North Carolina’s financial exploitation laws?

The financial exploitation laws are designed to protect older adults and disabled adults. An older adult is a person sixty-five years of age or older.⁷ A disabled adult is a person who is

- eighteen years of age or older or a lawfully emancipated minor,
- present in the state of North Carolina, and
- physically or mentally incapacitated.

According to the statute, a person may be physically or mentally incapacitated “as a result of mental retardation, cerebral palsy, epilepsy or autism, organic brain damage caused by advanced

“the illegal or improper use of a disabled adult or his resources for another’s profit or advantage”). The federal Elder Justice Act provides a consistent but slightly more detailed definition of exploitation: “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.” 42 U.S.C. § 1397j(8). For the laws and procedures discussed in this bulletin, the state law definitions are the most relevant.

3. U.S. Department of Justice, “Financial Exploitation in a Nutshell,” www.justice.gov/elderjustice/financial/financial-exploitation-in-a-nutshell.html, citing R. Acierno, M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, “Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,” *American Journal of Public Health* 100, no. 2 (2010): 292–97; E. O. Laumann, S. A. Leitsch, and L. J. Waite, “Elder Mistreatment in the United States: Prevalence Estimates from a Nationally Representative Study,” *Journal of Gerontology* 63 (2008): 48–54.

4. National Committee for the Prevention of Elder Abuse, Virginia Tech, and MetLife Mature Market Institute, *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America’s Elders* (June 2011), www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf.

5. “Financial Exploitation in a Nutshell,” U.S. Department of Justice, www.justice.gov/elderjustice/financial/financial-exploitation-in-a-nutshell.html.

6. For examples of different exploitation fact patterns, see U.S. Department of Justice, “Financial Exploitation Scenarios,” www.justice.gov/elderjustice/financial/common-scenarios.html.

7. G.S. 14-112.2(a); 108A-101. Prior to 2013 the law used the term *elder adult* rather than *older adult* and defined it to mean a person sixty years of age or older (rather than sixty-five). In addition, an *elder adult* was defined as a person 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.” By removing that language in the definition, the scope of the financial exploitation law was significantly expanded. S.L. 2013-337 (amending G.S. 14-112.2(a)(2)).

age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.”⁸ Therefore, an older adult may also be a disabled adult but only if that person is also physically or mentally incapacitated.

3. Does state law require reporting of financial exploitation?

Yes. Two laws require reporting of financial exploitation:

- *Suspected abuse, neglect, or exploitation of a disabled adult*: Any person who has reasonable cause to believe that a *disabled adult* is in need of protective services must report the information to the county director of social services.⁹ The term “protective services” includes those services necessary to protect the disabled adult from abuse, neglect, or *exploitation*. Protective services could, for example, involve asking a court to issue an order freezing the disabled adult’s assets.¹⁰
- *Suspected financial exploitation of a disabled or older adult*: Any financial institution (including officers and employees) that has reasonable cause to believe that *an older adult or a disabled adult* is the victim or target of financial exploitation must report the information to
 - any “trusted persons” previously identified by the adult;¹¹
 - the appropriate law enforcement agency; and
 - if the person is a disabled adult, the county DSS.

Both of these laws allow the report to be submitted orally or in writing. Both also require the reports to include the name and address of the person, the nature of the financial exploitation, and any other pertinent information. The first law (related to disabled adults) also requires that the report include the name and address of the adult’s caretaker and the adult’s age. According to the North Carolina Department of Health and Human Services, over two thousand reports of financial exploitation of a disabled adult were evaluated by county agencies in fiscal year 2013–14.¹²

There are several statutes granting immunity from liability to people or financial institutions that submit reports pursuant to these two laws or otherwise cooperate with investigations by providing documents or testifying in judicial proceedings.¹³ Immunity would not be available if the person or institution was not acting in good faith or acted for a malicious purpose.

8. G.S. 14-112.2(a); 108A-101; 108A-113.

9. G.S. 108A-102.

10. G.S. 108A-106

11. G.S. 108A-114 (“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.”). The financial institution may choose *not* to report the suspected exploitation to a “trusted person” on the adult’s list if the institution believes that person may be involved in the exploitation. G.S. 108A-115(a)(1).

12. Adult Protective Services Register, *Statistical Data Report for June 2014* (North Carolina Department of Health and Human Services, Division of Social Services), on file with the author.

13. G.S. 108A-102(c); 108A-115(c); 108A-116(e); 53B-9(c).

Financial institutions are also required to report “suspicious transactions” to the federal government.¹⁴ Because some of these transactions may be related to financial exploitation of a disabled adult or older adult, these institutions may be involved with concurrent or overlapping federal and state investigations.

4. What will happen after law enforcement receives a report of suspected financial exploitation of an older adult or a disabled adult?

Law enforcement officials will investigate the report to determine if there has been a violation of the state’s criminal financial exploitation law.¹⁵ If the officials find sufficient evidence of exploitation, they may pursue criminal charges against the alleged perpetrator. Two very similar types of crimes are outlined in state law. Both make it unlawful to

knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an older adult’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the older adult or disabled adult.¹⁶

The first crime applies only to people who either (1) stand in a position of trust and confidence with the adult or (2) have a business relationship with the adult.¹⁷ The second crime applies to everyone “except for a person acting within the scope of that person’s lawful authority as the agent” for the adult.¹⁸ The criminal penalties for the first crime are more stringent than those for the second.¹⁹

In the course of investigating a report, law enforcement officials may request a search warrant to obtain financial and other records. If presented with a valid search warrant, a financial institution is authorized to provide access to financial records.²⁰ Alternatively, law enforcement officials may request the same type of subpoena for financial records that DSS may request (see discussion in more detail under “Subpoena” in Question 6 below).

If the funds, assets, or property at issue is valued at more than \$5,000 and there is “clear and convincing evidence” that the defendant is about to or intends to divest assets, the district attorney may ask the court to freeze the defendant’s assets for the purpose of providing restitution to the victim.²¹

14. 31 C.F.R. § 1020.320. See also Financial Crimes Enforcement Network, *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation*, FIN-2011-A003, February 22, 2011, www.fincen.gov/statutes_regs/guidance/html/fn-2011-a003.html.

15. G.S. 14-112.2.

16. G.S. 14-112.2(b).

17. *Id.*

18. G.S. 14-112.2(c). Prior to the 2013 amendments, the second crime applied only if the person knew or reasonably should have known that the adult lacked the capacity to consent at the time the person used or obtained the adult’s funds, assets, or property. S.L. 2013-337 (amending G.S. 14-112.2(c)).

19. G.S. 14-112.2(d)–(e).

20. G.S. 53B-4(3).

21. G.S. 14-112.2(f); 14-112.3.

Table 1. Criminal penalties for financial exploitation of an older adult or a disabled adult

	First crime: Position of trust or business relationship	Second crime: Everyone other than agent acting within lawful scope of authority
Funds, assets, or property valued at \$100,000 or more	Class F felony	Class G felony
Funds, assets, or property valued from \$20,000 to \$99,999	Class G felony	Class H felony
Funds, assets, or property valued at less than \$20,000	Class H felony	Class I felony

5. What will happen after a department of social services (DSS) receives a report of suspected financial exploitation of a disabled adult?

When DSS receives a report of suspected financial exploitation of a disabled adult, it has a legal duty to review the report to determine if it has the authority to conduct an evaluation. If the agency appears to have the authority, it must take action quickly to initiate the evaluation and determine whether the disabled adult needs protective services.²² As part of the evaluation, agency staff will meet with the adult, interview others who may have information about the situation, and gather records and other information.

A department of social services has expansive authority to obtain medical and other records related to the adult's care in the course of conducting an investigation involving abuse and neglect, but the agencies have historically had some difficulty obtaining access to information from financial institutions (for example, banks and credit unions) early in an investigation because of stringent confidentiality laws governing records maintained by those institutions. This is one of the reasons the law was amended in 2013 and 2014. See discussion in Question 6 below.

If after an evaluation DSS concludes that a disabled adult has been a victim of financial exploitation, the agency will (1) report the information to the district attorney who may pursue criminal charges against the alleged perpetrator²³ and (2) provide protective services to the disabled adult. The law defines "protective services" broadly to allow DSS significant discretion in determining what is necessary to protect the disabled adult from further financial exploitation.²⁴ In these cases DSS may, for example, help the adult enlist a guardian of the estate.

22. G.S. 108A-14(15); 108A-103.

23. G.S. 108A-109. The department of social services is authorized by regulation to provide the district attorney with a written report of the agency's evaluation, which would include the name, address, age, and condition of the adult; the allegations (but not the identity of the reporter); the evaluation, including the agency's findings and supporting documents; conclusions; and recommendations for action. Title 10A, Chapter 71A, Section .0901 of the North Carolina Administrative Code (hereinafter N.C.A.C).

24. G.S. 108A-101(n). The term "protective services" means "services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult." The term "essential services" refers to "those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual." For

6. How may DSS officials obtain access to financial records when investigating a report of financial exploitation of a disabled adult?

A department of social services has three methods available for obtaining access to records from financial institutions: (1) consent, (2) freeze and inspect, and (3) subpoena. Below is a brief overview of each method.

Consent

Whenever possible, DSS should ask the adult for his or her consent to obtain copies of financial records. With a valid consent, a financial institution is authorized to provide copies of financial records to DSS.²⁵ The consent must comply with federal laws related to privacy of financial records, so it may be helpful to use a form provided by the financial institution.²⁶

Freeze and Inspect

The “freeze and inspect” method has been available for many years.²⁷ While it can be a useful tool for obtaining records and protecting a disabled adult’s assets in some circumstances, it has several important limitations. With this approach, DSS will petition the court for an order directing the financial institution to allow the agency to inspect the requested financial records at a specific date and time. The court may also order that the adult’s financial assets be frozen, which means that the funds may not be withdrawn, spent, or transferred without approval from the court.²⁸

Prior to petitioning the court to allow inspection and possibly freeze assets, DSS must have gathered enough information about the situation to give the court reasonable cause to believe that

- the adult lacks the capacity to consent,
- the adult is in need of protective services,
- the adult is being financially exploited by his or her caretaker, and
- no other person is able or willing to arrange for protective services.

When petitioning the court,²⁹ the DSS director or an authorized representative must sign a sworn statement verifying that all four of the above conditions are satisfied.

These conditions significantly constrain the use of this method as an investigatory tool. A department of social services may not, for example, rely on this method to gather information as it is conducting an evaluation after receiving a report of suspected financial exploitation. The agency must already have sufficient evidence of financial exploitation to persuade the court to issue this order. In addition, this method is available only if the adult is allegedly being exploited

further information about the scope of protective services provided by DSS, see Division of Aging and Adult Services, *Protective Services for Adults Manual*, N.C. Department of Health and Human Services, www.ncdhhs.gov/aging/adultsvcs/aps_manual.htm.

25. G.S. 53B-4(1).

26. Some financial institutions use a model form developed by the North Carolina Department of Health and Human Services, Division of Aging and Adult Services. See *Consent and Authorization for Access to Financial Records*, on file with the author.

27. It was added to the law in 1981 when most of the social services laws were amended and moved from G.S. Chapter 108 to Chapter 108A. 1981 N.C. Sess. Laws ch. 275.

28. G.S. 108A-106(f).

29. See [AOC-CV-776](#) (form petition issued by the Administrative Office of the Courts).

Relevant AOC Forms

AOC-G-100	Subpoena
AOC-CR-119	Search warrant; Application for search warrant
AOC-SPG-630	Petition and order for issuance of subpoena directing release of financial records (forthcoming)
AOC-CV-776	Petition for order to inspect financial records and to freeze assets
AOC-CV-777	Order to authorize inspection of financial records and to freeze assets
AOC-CV-778	Notice of order to authorize inspection of financial records and to freeze assets

by a caretaker; it may not be used if the alleged perpetrator is a friend, neighbor, or stranger. A department of social services also may not use this method where the adult has the capacity to consent but, for whatever reason, the agency either did not seek or was not able to obtain consent.

This method also has two other important limitations: (1) a notice requirement for the inspection and (2) a time restriction for the freezing of assets. Before the court may issue the order to inspect records, the adult's caretaker and every financial institution involved must be given notice and a reasonable opportunity to appear and show good cause why the records should not be inspected.³⁰ This notice requirement and any subsequent challenges can delay the inspection process significantly. According to the form used to issue the court's order,³¹ the adult (that is, the customer) has ten days after having been served with the court order to appear in court and challenge it.

The other limitation, the time restriction on the order to freeze assets, provides that the court order expires ten days after the records have been examined, unless the court chooses to extend it for good cause shown.

Subpoena

The subpoena is a new tool added to the law in 2013 and 2014.³² With this method DSS or law enforcement officials may ask the district court to issue a subpoena directing a financial institution to provide them copies of a disabled or older adult's financial records. Because this method is new, the process for implementing it is still developing but a description of the process outlined in state law follows.

- *Report received:* DSS or law enforcement officials ("investigating entities") receive a report of suspected financial exploitation. As noted above, DSS authority is limited to cases involving disabled adults. Law enforcement officials have more expansive authority to investigate cases involving both disabled and older (sixty-five and above) adults.

30. See [AOC-CV-778](#) (form notice).

31. See [AOC-CV-777](#) (form order).

32. G.S. 108A-116, 108A-117 (as amended by S.L. 2014-115).

- *Petition filed:* The investigating entity files a petition for a Special Proceeding Confidential (SPC) in district court.³³ The investigating entity is not required to provide the adult or the adult's caretaker with a copy of the petition at the time it is filed. The petition must be filed in the adult's county of residence and state that
 - a department of social services or law enforcement official is investigating a credible report that the adult is being or has been financially exploited,
 - the adult's financial records are needed to substantiate or evaluate the report, and
 - "time is of the essence" to prevent further exploitation of the adult.
- *Expedited hearing:* The district court must hear the case within two business days after the petition is filed. If it agrees with the petitioner, it may issue a subpoena directing the financial institution to provide copies of the financial records. The petition and the court's entire record of the proceeding are not public records. The court must maintain the records separately from other records, withhold them from public inspection, and allow them to be examined only pursuant to a court order.
- *Notice/Request for delayed notice:* When filing the petition for a subpoena, the investigating entity will want to determine whether it should ask the court to order a delay in the notice to the adult. In the absence of a delay, the law requires that if a subpoena is issued, the investigating entity must immediately provide notice to the adult (the customer). This notice might place the adult at risk of harm or compromise the investigation. Therefore, the law permits the investigating entity to request a delay if it believes providing the notice will result in
 - endangering the life or physical safety of any person,
 - flight from prosecution,
 - destruction of or tampering with evidence,
 - intimidation of potential witnesses,
 - serious jeopardy to an investigation or official proceeding, or
 - undue delay of a trial or official proceeding.

If the court agrees a delay is necessary, it must enter an ex parte order granting the delay. The court has flexibility in deciding how long the delay should last. When a delay is granted for any of the reasons listed above, the court can order the delay for up to 30 days. If the reason for the delay is that the notice may endanger the life or safety of a person, the court has the authority to extend the delay for up to 180 days. If an investigating entity believes further delays are necessary, it may petition the court accordingly.

- *Delivery of subpoena:* The subpoena may be delivered (1) by hand; (2) by certified mail, return receipt requested; or (3) through a designated delivery service authorized by federal tax law.³⁴

33. See AOC-SPC-630 (forthcoming form petition and order).

34. 26 U.S.C. § 7502(f)(2). The designated delivery services are: DHL Express (DHL Same Day Service); Federal Express/FedEx (Priority Overnight, Standard Overnight, 2Day, International Priority, International First); and United Parcel Service/UPS (Next Day Air, Next Day Air Saver, 2nd Day Air, 2nd Day Air A.M., Worldwide Express Plus, Worldwide Express). See Internal Revenue Service, *1040 Instructions* (2013) www.irs.gov/pub/irs-pdf/i1040.pdf. The subpoena may be addressed to the financial institution's (1) local branch or office vice president; (2) local branch or office manager or assistant manager; (3) the agent for service of process listed with the North Carolina Secretary of State; or (4) if there is no agent listed in North Carolina, with an agent listed for the financial institution in other states.

- *Motion to quash or modify*: Once a financial institution has been served with a subpoena, it has ten days to file a motion to quash or modify the subpoena.³⁵ The financial institution may assert one or more of the following reasons for its motion:
 - There is a procedural defect with the subpoena.
 - The subpoena contains insufficient information to identify the records subject to the subpoena.
 - The financial institution is otherwise prevented from promptly complying with the subpoena.
 - The petition was filed or subpoena requested for an improper purpose or based upon insufficient grounds.
 - The subpoena subjects the financial institution to an undue burden or is otherwise unreasonable or oppressive.

If a financial institution files a motion, the court has two business days to hold a hearing and issue an order that upholds, modifies, or quashes the subpoena.

- *Producing financial records*: When a financial institution receives a subpoena, and the subpoena has not been modified or quashed as discussed above, the institution must promptly provide the financial records to the investigating entity (DSS or law enforcement).³⁶ The term *promptly* is defined to mean “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.”³⁷
- *Charging a fee for financial records*: The financial institution is authorized to charge DSS and law enforcement officials a fee for costs incurred in assembling and producing the records. The fees are specified in federal law: entities may be charged \$0.25 per page for photocopies and between \$22.00–30.00 per hour for staff time depending upon the staff member’s role.³⁸ The institution may waive the fee, in whole or in part.³⁹
- *Immunity for providing financial records*: As mentioned above in Question 3, the law provides immunity from liability to the financial institution (and its officers and employees) for providing financial records in response to a subpoena.⁴⁰ Immunity would not be available if the person or institution was not acting in good faith or acted for a malicious purpose.

7. Must DSS protect the confidentiality of the financial records it obtains pursuant to a subpoena?

Yes. After a financial institution discloses records, the recipient must keep that information confidential unless the records are required to be disclosed in conjunction with a court proceeding.⁴¹ As a result, DSS staff members will need to develop a system to provide extra protection

35. G.S. 108A-116(b1) (as amended by S.L. 2014-115).

36. G.S. 108A-116(c).

37. G.S. 108A-113(9).

38. G.S. 53B-9(b); 12 U.S.C. § 3415; 12 C.F.R. § 219, Appendix A.

39. The authority to waive the fee was added to the law in 2013. S.L. 2013-337, § 2(b) (amending G.S. 53B-9).

40. G.S. 108A-116(e); 53B-9(c).

41. G.S. 108A-116(d).

for these records within the agency. While DSS is subject to other laws that require the agency to keep the information gathered in the course of an adult protective services (APS) investigation confidential, those laws allow DSS to disclose APS information more broadly.⁴² For example, a state regulation allows DSS to disclose APS information for research.⁴³ A department of social services would not be allowed to disclose these financial records for that purpose.

It is possible that DSS may not be able to share the subpoenaed financial records with the district attorney. If DSS finds evidence of financial exploitation, the agency must report that information to the district attorney.⁴⁴ The agency is authorized to provide a written evaluation to the district attorney at that time.⁴⁵ That written report may include “supporting documents,” which would arguably include the financial records. The new statute, however, provides that the investigating entity (DSS) may not disclose the records “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.”⁴⁶ The new statute, therefore, appears to prohibit DSS from sharing the financial records with the district attorney. This strict interpretation of the law seems contrary to the overall intent of the statutory scheme, but it is how the current legal framework fits together.

Conclusion

According to some reports, financial exploitation of older adults is expected to increase substantially in the next decade as the size of our nation’s aging population grows.⁴⁷ The 2013 and 2014 changes in North Carolina’s law may make it easier for DSS to obtain access to financial records when investigating a report of exploitation for at least one subset of this population—disabled adults. It will be interesting to see whether the state experiences an increase in the number of cases identified and prosecuted in the coming years.

42. G.S. 108A-80; 10A N.C.A.C. 69; 10A N.C.A.C. 71A, § .0800.

43. 10 N.C.A.C. 69, § .0502.

44. G.S. 108A-109.

45. 10A N.C.A.C. 71A, §§ .0906, .0901.

46. G.S. 108A-116(d).

47. Kirsten J. Colello, *The Elder Justice Act: Background and Issues for Congress*, Congressional Research Service 7-5700 (Sept. 3, 2014): 2–3, <http://fas.org/sgp/crs/misc/R43707.pdf>.

Selected North Carolina Laws Related to Financial Exploitation of Older and Disabled Adults

G.S. Chapter 7A: Judicial Department

G.S. § 7A-246. Special proceedings; exceptions; guardianship and trust administration.

G.S. Chapter 14: Criminal Law

G.S. § 14-112.2. Exploitation of an older adult or disabled adult.

G.S. § 14-112.3. Asset freeze or seizure; proceeding.

G.S. Chapter 53B. Financial Privacy Act

§ 53B-4. Access to financial records.

§ 53B-5. Service on customer certification.

§ 53B-6. Delayed notice.

§ 53B-7. Customer challenge.

§ 53B-8. Disclosure of financial records.

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

§ 53B-10. Penalty.

G.S. Chapter 108A, Article 6: Protection of the Abused, Neglected or Exploited Disabled Adult Act (selected statutes)

§ 108A-101. Definitions.

§ 108A-102. Duty to report; content of report; immunity.

§ 108A-103. Duty of director upon receiving report.

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

§ 108A-109. Reporting abuse.

G.S. Chapter 108A, Article 6A: Protection of Disabled and Older Adults from Financial Exploitation

§ 108A-112. Legislative intent and purpose.

§ 108A-113. Definitions.

§ 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.

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

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

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

G.S. Chapter 7A: Judicial Department

§ 7A-246. Special proceedings; exceptions; guardianship and trust administration.

The superior court division is the proper division, without regard to the amount in controversy, for the hearing and trial of all special proceedings except proceedings under the Protection of the Abused, Neglected or Exploited Disabled Adult Act (Article 6 of Chapter 108A of the General Statutes), proceedings for the protection of disabled and older adults from financial exploitation (Article 6A of Chapter 108A of the General Statutes), proceedings for involuntary commitment to treatment

facilities (Article 5 of Chapter 122C of the General Statutes), adoption proceedings (Chapter 48 of the General Statutes), and of all proceedings involving the appointment of guardians and the administration by legal guardians and trustees of express trusts of the estates of their wards and beneficiaries, according to the practice and procedure provided by law for the particular proceeding.

G.S. Chapter 14: Criminal Law

§ 14-112.2. Exploitation of an 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) Older adult. – A person 65 years of age or older.
- (b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an older adult or disabled adult, or (ii) who has a business relationship with an older adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the older adult or disabled adult.
- (c) It is unlawful for a person to knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the 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 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 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 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 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 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 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 older adult or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class I felony.

- (f) If a person is charged with a violation of this section that involves funds, assets, or property valued at more than five thousand dollars (\$5,000), the district attorney may file a petition in the pending criminal proceeding before the court with jurisdiction over the pending charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The standard of proof required to freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The procedure for petitioning the court under this subsection shall be governed by G.S. 14-112.3.

§ 14-112.3. Asset freeze or seizure; proceeding.

- (a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.
- (b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court with jurisdiction over the pending charges to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.
- (c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.
- (d) In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the court finds that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the court shall order the assets frozen or held until further order of the court. The rules of evidence that apply to this proceeding are the rules that would apply in a proceeding pursuant to G.S. 1A-1, Rule 65.
- (e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets.
- (f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law.

G.S. Chapter 53B. Financial Privacy Act

§ 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:

- (1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the

purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary.

- (2) Authorization under G.S. 105-242 or G.S. 105-258.
- (3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes.
- (4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.
- (5) The authority granted under G.S. 116B-72 and G.S. 116B-75.
- (6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or G.S. 147-64.7(a).
- (7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans.
- (8) Pending litigation to which the government authority and the customer are parties.
- (9) Subpoena or court order in connection with a grand jury proceeding.
- (10) A writ of execution under Article 28 of Chapter 1 of the General Statutes.
- (11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.
- (12) The authority granted to the Attorney General under Chapter 75 of the General Statutes.
- (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.

As used in this section, the term “reasonable specificity” means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class.

§ 53B-5. Service on customer certification.

A government authority may have access to a customer’s financial record pursuant to G.S. 53B-4(11) only if:

- (1) The court order or subpoena describes with reasonable specificity the financial record to which access is sought;
- (2) A copy of the court order or subpoena has been served on the customer pursuant to G.S. 1A-1, Rule 4 (j) of the N.C. Rules of Civil Procedure or by certified mail to the customer’s last known address and the court order or subpoena states the name of the government authority seeking access to the financial record and the purpose for which access is sought;
- (3) The following notice has been served on the customer pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure or by certified mail to the customer’s last known address together with the court order or subpoena:

“Records or information held by the financial institution named in the attached process are being sought by government authority in accordance with the North Carolina Financial Privacy Act. You may have rights under the act to challenge

access to the records or information. You must, however, act within 10 days from the date this notice was served on you to make a challenge in court or the records or information will be made available. You may wish to employ an attorney to represent you and protect your rights.”;

- (4) The customer has not challenged the court order or subpoena within 10 days after service by certified mail which is presumed to be received three days from mailing;
- (5) The government authority has certified in writing to the financial institution that it has complied with the applicable provisions of this Chapter.

§ 53B-6. Delayed notice.

Upon application of a government authority, a superior court judge may order that the customer notice required by G.S. 53B-5 be delayed if the court finds there is reason to believe that:

- (1) The financial record to which access is sought is relevant to a legitimate government inquiry; and
- (2) Notice to the customer will:
 - a. Endanger life or physical safety of any person;
 - b. Result in flight from prosecution;
 - c. Lead to intimidation of a witness;
 - d. Result in destruction of or tampering with evidence; or
 - e. Otherwise seriously jeopardize the government inquiry or an official proceeding or investigation.

A court order granting delay of notice to a customer under this section shall set out the specific facts supporting its findings, specify the period of delay, and direct that the government authority shall serve on the customer at the end of that period a copy of the court order or subpoena and a notice that the records have been furnished.

§ 53B-7. Customer challenge.

- (a) Within 10 days after service of a court order or subpoena under this Chapter a customer may apply to the superior court of the county in which he resides for an order quashing or modifying the court order or subpoena. The customer shall deliver or mail a copy of the application to the government authority and the financial institution named in the court order or subpoena. The superior court shall grant or deny the application within 10 days after it is filed.
- (b) Nothing in this Chapter affects the right of a financial institution to challenge a request for financial records by a government authority under existing law.

§ 53B-8. Disclosure of financial records.

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this section shall prohibit a financial institution or its officer, employee or agent from disclosing, or require the disclosure of, the name, address, and existence of an account of any customer to a government authority that makes a written request stating the reason for the request. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected

illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure.

§ 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), (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, 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.

§ 53B-10. Penalty.

- (a) Any financial institution disclosing financial records or information contained therein in violation of this Chapter shall be liable to the customer to whom the records relate in an amount equal to the sum of:
 - (1) One thousand dollars (\$1,000);
 - (2) Any actual damages sustained by the customer as a result of the disclosure; and
 - (3) Such punitive damages as the court may allow, where the violation is found to have been willful or intentional.
- (b) Any government authority that participates in or induces or solicits a violation of this Chapter shall be liable to the customer to whom the violation relates in the amount set out in subsection (a) above. It shall be a defense to an action under this subsection that the government authority acted in good faith in obtaining and relying upon process issued pursuant to G.S. 53B-4.

**G.S. Chapter 108A, Social Services, Article 6: Protection of the Abused,
Neglected or Exploited Disabled Adult Act**

§ 108A-101. Definitions.

- (a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

- (b) The word “caretaker” shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.
- (c) The word “director” shall mean the director of the county department of social services in the county in which the person resides or is present, or his representative as authorized in G.S. 108A-14.
- (d) The words “disabled adult” shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.
- (e) A “disabled adult” shall be “in need of protective services” if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.
- (f) The words “district court” shall mean the judge of that court.
- (g) The word “emergency” refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.
- (h) The words “emergency services” refer to those services necessary to maintain the person’s vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.
- (i) The words “essential services” shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult’s rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words “essential services” shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.
- (j) The word “exploitation” means the illegal or improper use of a disabled adult or his resources for another’s profit or advantage.
- (k) The word “indigent” shall mean indigent as defined in G.S. 7A-450.
- (l) The words “lacks the capacity to consent” shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician’s or psychologist’s assistance in making this determination.
- (m) The word “neglect” refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person’s mental or physical health or is not receiving services from the person’s caretaker.

A person is not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C-181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and the person needs medical treatment.

- (n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult.

§ 108A-102. Duty to report; content of report; immunity.

- (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.
- (b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.
- (c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose.

§ 108A-103. Duty of director upon receiving report.

- (a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. When necessary for a complete evaluation of the report, the director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or agency acting as a caretaker for the disabled adult. This shall include but not be limited to records maintained by facilities licensed by the North Carolina Department of Health and Human Services. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director shall have the authority to conduct an interview with the disabled adult with no other persons present. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.
- (b) The staff and physicians of local health departments, area mental health, developmental disabilities, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

- (c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.
- (d) The director shall initiate the evaluation described in subsection (a) of this section as follows:
 - (1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).
 - (2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).
 - (3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g).
 - (4) Repealed by Session Laws 2000, c. 131, s. 1.

The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation.

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

- (a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:
 - (1) A disabled adult lacks capacity to consent and that he is in need of protective service;
 - (2) An emergency exists; and
 - (3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.
- (b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.
- (c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.
- (d) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the said order. Copies of the said order together with such other appropriate

notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At such hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section.

- (e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.
- (f) (1) Upon petition by the director, a court may order that:
 - a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
 - b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.
- (2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:
 - a. A disabled adult lacks the capacity to consent and that he is in need of protective services;
 - b. The disabled adult is being financially exploited by his caretaker; and
 - c. No other person is able or willing to arrange for protective services.
- (3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.
- (g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith.

§ 108A-109. Reporting abuse.

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney.

G.S. Chapter 108A, Social Services, 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) 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.
- (7) Law enforcement agency. - Any duly accredited State or local government agency possessing authority to enforce the criminal statutes of North Carolina.
- (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, petition the district court to issue a subpoena directing a financial institution to provide to the investigating entity the financial records of a disabled adult or older adult customer. The petition shall be filed in the county of residence of the disabled adult or older adult customer whose financial records are being subpoenaed. The court shall hear the case within two business days after the filing of the petition. The court shall issue the subpoena 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.
- (b1) A financial institution may challenge the subpoena by filing a motion to quash or modify the subpoena within ten days after receipt of delivery of the subpoena pursuant to subsection (b) of this section. The subpoena may be challenged only for the following reasons:
- (1) There is a procedural defect with the subpoena.
 - (2) The subpoena contains insufficient information to identify the records subject to the subpoena.
 - (3) The financial institution is otherwise prevented from promptly complying with the subpoena.
 - (4) The petition was filed or subpoena requested for an improper purpose or based upon insufficient grounds.
 - (5) The subpoena subjects the financial institution to an undue burden or is otherwise unreasonable or oppressive.
- Within two business days after the motion is filed, the court shall hear the motion and issue an order upholding, modifying, or quashing the subpoena.
- (c) Upon receipt of a subpoena delivered pursuant to subsection (b) of this section identifying the disabled adult or older adult customer or, if the subpoena is challenged pursuant to subsection (b1) of this section, entry of a court order upholding or modifying a subpoena, 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.
- (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 order 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.
- (g) The petition and the court's entire record of the proceedings under this section is not a matter of public record. Records qualifying under this subsection shall be maintained separately from other records, shall be withheld from public inspection, and may be examined only by order of the court.

§ 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 firstclass 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 court 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 court, 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 court 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 court.
- (d) Upon application by the investigating entity, further extensions of the delay of notice may be granted by order of a court 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.

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