

New Law Helps Protect Older Adults and Disabled Persons from Financial Exploitation

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Older North Carolinians will soon have a new source of protection from financial exploitation, and financial institutions will soon have a new customer protection law to observe.

Just a couple of weeks ago, Governor Pat McCrory signed into law a bipartisan bill designed to protect older adults and disabled adults from financial exploitation. The actual title of the bill is "AN ACT TO INCREASE THE RECOGNITION, REPORTING, AND PROSECUTION OF THOSE WHO WOULD DEFRAUD OR FINANCIALLY EXPLOIT DISABLED OR OLDER ADULTS and to CONTINUE THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS, as recommended by THE TASK FORCE ON FRAUD AGAINST OLDER ADULTS." If ever there was a bill that could benefit from a short title, this is it! Alas, the General Assembly did not include a short title.

The legislation was supported by the North Carolina Bankers Association, the North Carolina Credit Union Association, and the North Carolina Attorney General's office. It passed almost unanimously: 111 to 1 in the House and 47 to 0 in the Senate. (The lone objector was Rep. Spicale, who told me that he was concerned about the regulatory burden created.)

The Act gives financial institutions permission to **solicit a list of trusted individuals** from older and disabled adults to notify in case of suspected exploitation. Institutions are not required to ask for a list, nor are customers required to provide any names.

If a financial institution, or an officer or employee of a financial institution, has "reasonable cause to believe that a disabled adult or older adult [customer] is the victim or target of financial exploitation," they must report the information. (The term "disabled adult" means anyone who is physically or mentally incapacitated as defined in N.C.G.S. 108A-101(d). The term "older adult" means **anyone** age 65 or older.) Note the use of the word "target," which, although not defined, implies that financial institutions should be somewhat proactive in reporting before a customer is victimized. It is also interesting that the term "financial exploitation" is defined as "the illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage." The use of the term "improper" indicates that the acts in question need not necessarily be illegal.

A financial institution must report suspected exploitation to the following:

- **Persons on the list provided by the customer**, if such a list has been provided by the customer (unless a person on the list is suspected);
- The appropriate **local law enforcement agency**; and
- The appropriate **county department of social services**, if the customer is a disabled adult.

The report may be verbal, but I would suggest documenting it in writing. The report must include the name and address of the customer, the nature of the suspected exploitation, and any other relevant information. The Act provides that no financial institution, officer, or employee who reports this sort of information in good

faith can be held liable for doing so. The Act enables a law enforcement agency or a social services department investigating alleged financial exploitation to seek a **subpoena** from a judge in the county in which the disabled or older adult resides for the financial records of the disabled or older adult. A customer whose information is turned over pursuant to a subpoena of this type cannot be penalized or prosecuted for anything obtained by a law enforcement agency using this type of subpoena, with the exception of a joint account holder accused of exploiting the other account holder. The agency is required to notify the customer when the subpoena is issued, unless there is a risk that a customer notice could hamper an investigation, in which case the judge may order that the customer not be notified until later. In that event, the judge's order will also direct the financial institution not to disclose the existence of the subpoena or investigation to the customer.

Action Items for Financial Institutions: The law becomes effective **December 1, 2013**. Financial institutions should begin **updating their subpoena response policies** to address the new law, decide **whether they will solicit lists of trusted individuals** from their older or disabled customers, and **update privacy policies** to comport with the new law and policy.

You can read the full text of the new law here.

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