

## 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. (2013-337, s. 4.)

#### **§ 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. (2013-337, s. 4.)

#### **§ 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. (2013-337, s. 4.)

#### **§ 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. (2013-337, s. 4.)

**§ 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. (2013-337, s. 4; 2014-115, s. 44(a).)

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

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

(b) An investigating entity may include in its application for a subpoena pursuant to G.S. 108A-116 a request for an order delaying the customer notice required pursuant to subsection (a) of this section. The 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. (2013-337, s. 4; 2014-115, s. 44(b).)

**§ 108A-118:** Reserved for future codification purposes.

**§ 108A-119:** Reserved for future codification purposes.