

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH30315-MU-39

Short Title: Fin. Exploit. Prevention/Savings Bank Updates.

(Public)

Sponsors: Representative Ross.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROTECT DISABLED AND OLDER ADULTS FROM FINANCIAL
EXPLOITATION AND TO UPDATE THE SAVINGS BANK LAWS TO INCREASE
ALIGNMENT WITH THE COMMERCIAL BANKING LAWS.

The General Assembly of North Carolina enacts:

**PART I. ENHANCEMENTS TO ARTICLE 6A OF CHAPTER 108A, "PROTECTION
OF DISABLED AND OLDER ADULTS FROM FINANCIAL EXPLOITATION"**

SECTION 1.(a) G.S. 108A-112 reads as rewritten:

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

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

(b) The General Assembly finds that older adults in this State are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups.

(c) The General Assembly recognizes that financial institutions have duties imposed by law and by contract to conduct customer-directed transactions in a timely manner and in accordance with their customers' instructions.

(d) The General Assembly intends to provide financial institutions with the tools and protections to take action based upon the reasonable belief that older adults or disabled adults who have accounts with the financial institutions have been or are the subject of financial exploitation and to provide financial institutions and their employees immunity from liability for taking actions as authorized in this Article.

(e) The General Assembly intends to balance the rights of older adults and disabled adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, 30-day limited restrictions on these rights in an effort to decrease older adults or disabled adults' risk of loss due to abuse, neglect, or financial exploitation."

SECTION 1.(b) G.S. 108A-113 reads as rewritten:

"§ 108A-113. Definitions.

As used in this Article, the following definitions apply:

- (1) Customer. – A person ~~who~~ that is a present or former holder of an account with a financial institution.



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- (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 ~~this State~~ 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 money, assets, property, or other financial resources for another's profit or pecuniary advantage, advantage, or any act or omission by a person, including through the use of power of attorney, guardianship, or conservatorship, to do either of the following:
- a. Obtain control over the older adult's or disabled adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- b. Divert the older adult's or disabled adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- (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.
- (10) Trusted contact. – Includes any of the following:
- a. A natural person 18 years of age or older whom the customer has expressly identified pursuant to G.S. 108A-114 in a financial institution's records as the person who may be contacted (i) about either the account or the account owner to address possible financial exploitation or to confirm the specifics of the account owner's current contact information or health status; (ii) to determine the identity of any conservator, executor, trustee, or agent; or (iii) to address any other concern reasonably related to the administration of the account.
- b. A joint account owner, additional authorized signatory, beneficiary of the customer's account, or an agent under a power of attorney.
- c. An attorney, trustee, conservator, guardian, or other fiduciary whom a court or government agency has selected to manage some or all of the financial affairs of the older adult or disabled adult.
- d. A parent, spouse, adult child, sibling, or other family member of an older adult or disabled adult whom a financial institution believes is closely associated with the older adult or disabled adult."

SECTION 1.(c) G.S. 108A-115 reads as rewritten:

"§ 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~~ this 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.~~ provided. 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 officer, employee, or agent, that acts in good faith in making a report under this section may be held liable in any action for doing so. Furthermore, a financial institution, and its officers, employees, and agents, shall not be compelled in any action to identify the existence of or the contents of a suspicious activity report related to suspected financial abuse activity that may have been filed with the U.S. Department of the Treasury's Financial Crimes Enforcement Network pursuant to requirements of the Bank Secrecy Act, 31 U.S.C. § 5318(g)(2), and its implementing regulations.~~

SECTION 1.(d) Article 6A of Chapter 108A of the General Statutes is amended by adding two new sections to read:

"§ 108A-118. Transaction delays and refusals.

(a) A financial institution may choose to delay or refuse a disbursement or transaction from an account of a disabled adult or older adult or an account for which a disabled adult or older adult is a beneficiary or beneficial owner if all of the following apply:

- (1) The financial institution and its employees believe that financial exploitation of the older adult or disabled adult may have occurred, may have been attempted, or is occurring or is being attempted.
- (2) The belief is based on individual observation or information received, including information received from a government agency or law enforcement agency.
- (3) The financial institution promptly initiates an internal review of the facts and circumstances that caused an employee of the financial institution to delay or refuse the disbursement or transaction.

(b) If the conditions of subsection (a) of this section are met, a financial institution may do any of the following:

- (1) Delay or refuse one or more transactions with or involving the older adult or disabled adult.
- (2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the older adult or disabled adult's account.
- (3) Prevent a change in ownership of the older adult or disabled adult's account.
- (4) Prevent a transfer of funds from the older adult or disabled adult's account to an account owned wholly or partially by another person.
- (5) Refuse to comply with instructions given by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the older adult or disabled adult.
- (6) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an older adult or disabled adult at death.

- 1 (c) A financial institution shall use discretion to determine whether or not to act under
2 subsections (a) and (b) of this section based on the information available to its staff at the time.
3 The authority to delay a transaction expires upon the earlier of the following:
- 4 (1) Thirty business days after the date on which the depository institution first
5 acted under the authority in this section.
- 6 (2) When the depository institution is satisfied in its discretion that the transaction
7 or act will not likely result in financial exploitation of the older adult or
8 disabled adult.
- 9 (3) Upon an order of a court directing the release of funds.
- 10 (d) Unless otherwise directed by order of a court, a financial institution may extend the
11 duration of a delay up to an additional 30 days based on a reasonable belief that the financial
12 exploitation of an older adult or disabled adult may continue to occur or continues to be
13 attempted.
- 14 (e) A financial institution shall create and maintain for at least five years from the date
15 of the delayed or refused disbursement or transaction a written or electronic record that includes,
16 at a minimum, the following information:
- 17 (1) The date on which the delay or refusal was first placed.
- 18 (2) The name and address of the older adult or disabled adult.
- 19 (3) The business location of the financial institution.
- 20 (4) The name and title of the employee who reported suspected financial
21 exploitation of the older adult or disabled adult pursuant to G.S. 108A-115.
- 22 (5) The facts and circumstances that caused the employee to report suspected
23 financial exploitation.
- 24 (f) A financial institution that acts in good faith and exercises reasonable care to comply
25 with this section is immune from any civil, criminal, or administrative liability that might
26 otherwise arise from the financial institution's action, inaction, or delay in a disbursement or
27 transaction in accordance with this section. This protection from liability also extends to
28 employees of a financial institution. This subsection does not supersede or diminish any
29 immunity granted elsewhere in this Chapter. If a financial institution or its employees make, or
30 choose not to make, a disclosure to a trusted contact or participate in a judicial proceeding,
31 administrative proceeding, or investigation arising from a notification or report, the financial
32 institution and its employees are immune from any civil, criminal, or administrative liability
33 arising from the disclosure, nondisclosure, notification, or participation, unless the financial
34 institution or its employees had actual knowledge of financial exploitation and acted with a
35 malicious purpose. For purposes of this section, a financial institution and its employees are
36 deemed to be acting with reasonable care if the financial institution has established training
37 policies, programs, and procedures for its employees consistent with the requirements of
38 subsection (g) of this section.
- 39 (g) Before placing a delay on a disbursement or transaction pursuant to this section, a
40 financial institution shall do all of the following:
- 41 (1) Develop training policies or programs reasonably designed to educate
42 employees who perform or approve transactions on behalf of customers on
43 issues pertaining to financial exploitation of older adults or disabled adults.
- 44 (2) With respect to an individual who begins employment with a financial
45 institution, the training shall be conducted within one year after the date on
46 which the individual becomes employed by or affiliated or associated with the
47 financial institution.
- 48 (3) Develop, maintain, and enforce written procedures regarding the manner in
49 which suspected financial exploitation is reviewed internally, including, if
50 applicable, the manner in which suspected financial exploitation is required to
51 be reported to supervisory personnel.

(h) Absent a reasonable belief of financial exploitation as provided in this section, this section does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account and any trusted contact named on the account. This section does not create new rights for or impose new obligations or new duties on a financial institution under other applicable law.

(i) Notwithstanding any other law to the contrary, the following provisions apply:

(1) The refusal to engage in a transaction as authorized under this section does not constitute the wrongful dishonor of an item under G.S. 25-4-402.

(2) A reasonable belief that payment of a check will facilitate the financial exploitation of an older adult or disabled adult constitutes reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. § 5001 et seq., the federal Expedited Funds Availability Act, 12 U.S.C. § 4001 et seq., and 12 C.F.R. Part 229. Nothing in this subdivision, however, requires financial institutions and their employees to review the checks of older adults or disabled adults.

(j) A delay or refusal to complete a funds transfer request as authorized under this section does not violate Article 4A of Chapter 25 of the General Statutes. Furthermore, if a transaction is delayed under this section, the payment order is not deemed as received until the hold is removed and the financial institution submits the payment order for processing. "Funds transfer" and "payment order" have the meaning provided in Article 4A of Chapter 25 of the General Statutes.

"§ 108A-119. Notifications to trusted contacts.

(a) A financial institution may notify a trusted contact, if any, if the financial institution or its employees believe that financial exploitation of an older adult or disabled adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(b) A financial institution and its employees may choose not to notify a trusted contact if the financial institution or its employees believe that the third party is, may be, or may have been engaged in the financial exploitation of an older adult or disabled adult.

(c) When providing information, a financial institution or its employees may limit the information provided to disclosing their suspicion that the older adult or disabled adult may be a victim or target of financial exploitation.

(d) Any disclosure under this section is exempt from State privacy laws."

PART II. UPDATES TO CHAPTER 54C, "SAVINGS BANKS," TO INCREASE ALIGNMENT WITH THE COMMERCIAL BANKING LAWS IN CHAPTER 53C

SECTION 2.(a) G.S. 54C-4(b) reads as rewritten:

"(b) ~~Unless the context otherwise requires, the~~ The following definitions apply in this Chapter:

...

(25a) Public notice. – A single publication in a newspaper of general circulation in a community and a posting in the notices section of the Commissioner's website for at least 15 days. The Commissioner may waive the publication requirement and establish by rule an alternative method of publication in those instances when there is not a newspaper of general circulation operating in a community.

...."

SECTION 2.(b) G.S. 54C-23 reads as rewritten:

"§ 54C-23. Branch offices.Establishment of branch offices.

(a) ~~A State savings bank may apply to the Commissioner of Banks for permission to establish a branch office. The application shall be in the form prescribed by the Commissioner~~

of Banks and shall be accompanied by the proper branch application fee. The Commissioner of Banks shall approve or deny branch applications within 120 days of filing.

(b) ~~The Commissioner of Banks shall approve a branch application when all of the following criteria are met:~~

- ~~(1) The applicant has gross assets of at least ten million dollars (\$10,000,000).~~
- ~~(2) The applicant has evidenced financial responsibility.~~
- ~~(3) The applicant has a net worth equal to or exceeding the amount required by the insurer of deposit accounts.~~
- ~~(4) The applicant has an acceptable internal control system that includes certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant.~~

(c) ~~Upon receipt of a branch application, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Commissioner of Banks that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the savings bank is otherwise lawfully entitled to establish the branch office, then the Commissioner of Banks shall approve the branch application.~~

(d) ~~Not more than 10 days following the filing of the branch application with the Commissioner of Banks, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. The notice shall contain:~~

- ~~(1) A statement that the branch application has been filed with the Commissioner of Banks;~~
- ~~(2) The proposed address of the branch office, including city or town and street; and~~
- ~~(3) A statement that any interested or affected party may file a written statement with the Commissioner of Banks, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application.~~

(e) ~~Any interested or affected party may file a written statement with the Commissioner of Banks within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application. If a hearing is held on the branch application, the Commissioner of Banks shall receive information and hear testimony only from the applicant and from any interested or affected party that is relevant to the branch application and the operation of the proposed branch office. The Commissioner of Banks shall issue the final decision on the branch application within 30 days following the hearing. The final decision shall be in accordance with Chapter 150B of the General Statutes.~~

(f) ~~If a hearing is not held on the branch application, the Commissioner of Banks shall issue the final decision within 120 days of the filing of the application. The final decision shall be in accordance with Chapter 150B of the General Statutes.~~

(g) ~~A party to a branch application may appeal the final decision of the Commissioner of Banks to the Commission at any time after the final decision, but not later than 30 days after a written copy of the final decision is served upon the party and the party's attorney of record by personal service or by certified mail. Failure to file an appeal within the time stated shall operate as a waiver of the right of the party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review.~~

(a) A State savings bank may establish one or more branches in this State, whether de novo or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld,

in the Commissioner's discretion after considering any comments received within 14 days of the date of publication of the public notice under subsection (c) of this section.

(b) A State savings bank may establish branches in another state, whether de novo or by acquisition of existing branches of another depository institution, in accordance with applicable federal law and the laws of the other state, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld in the Commissioner's discretion after considering any comments received within 14 days of the date of publication of the public notice under subsection (c) of this section.

(c) A State savings bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor less than 10 days after the filing of the application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following:

(1) A statement that the application has been filed with the Commissioner.

(2) The physical address or location of the proposed branch, including street and city or town.

(3) A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

(d) A State savings bank may conduct any activities at a branch in another state authorized under this section that are permissible for a State savings bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the State savings bank.

(e) Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request additional information that the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant State savings bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve."

SECTION 2.(c) G.S. 54C-24 reads as rewritten:

"§ 54C-24. Request to change Change of location of a branch or principal office.

~~The board of directors of a State savings bank may change the location of a branch office or the principal office of the savings bank with the prior written approval of the Commissioner of Banks. The Commissioner of Banks may request, and the savings bank shall provide, any information that the Commissioner of Banks determines is necessary to evaluate the request.~~

(a) A State savings bank may change the location of its principal office or a branch with the prior written approval of the Commissioner. A request to relocate the principal office or a branch of a State savings bank shall be made in a form acceptable to the Commissioner and shall include information regarding the reason for the proposed relocation, the distance and direction of the move, and any other information that the Commissioner requires in order to reach a decision in the matter.

(b) Not more than 30 days before nor less than 10 days after filing a request to relocate the principal office or a branch of a State savings bank, the applicant shall publish public notice of the request. The public notice shall contain all of the following:

(1) A statement that the request has been filed with the Commissioner.

(2) The physical address of the principal office or branch to be relocated and the physical address of the proposed new location.

(3) A statement that any interested person may make written comment on the request to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice will be considered. The statement shall provide the current mailing address of the Commissioner.

(c) The Commissioner shall consider any comments received within 14 days of the date of publication of the public notice under subsection (b) of this section. The Commissioner shall approve a request to relocate the principal office or a branch of a State savings bank if any of the following applies:

(1) The relocation is to a site within the same vicinity as the original location.

(2) The relocation does not result in a material change in the primary service area of the principal office or branch.

(3) The relocation is considered important to the economic viability of the State savings bank or the branch.

(4) The relocation is otherwise found not to be inconsistent with the public need and convenience."

SECTION 2.(d) G.S. 54C-60 reads as rewritten:

"§ 54C-60. Confidential information.

(a) ~~The following records or information of the Commission, the Commissioner of Banks, or the agent of either shall be confidential and shall not be disclosed:~~

(1) ~~Information obtained or compiled in preparation of or anticipation of, or during an examination, audit, or investigation of any association;~~

(2) ~~Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, any stockholder list supplied to the Commissioner of Banks under G.S. 54C-22, or specific deposit accounts held by a named member or customer;~~

(3) ~~Information obtained, prepared, or compiled during or as a result of an examination, audit, or investigation of any savings bank by an agency of the United States, if the records would be confidential under federal law or regulation;~~

(4) ~~Information and reports submitted by savings banks to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;~~

(5) ~~Information and records regarding complaints from the public received by the Division that concern savings banks when the complaint would or could result in an investigation, except to the management of those savings banks; and~~

(6) ~~Any other letters, reports, memoranda, recordings, charts or other documents or records that would disclose any information of which disclosure is prohibited in this subsection.~~

(b) ~~A court of competent jurisdiction may order the disclosure of specific information.~~

(c) ~~The information contained in an application is deemed to be public information. Disclosure shall not extend to the financial statement of the incorporators nor to any further information deemed by the Commissioner of Banks to be confidential.~~

(d) ~~Nothing in this section shall prevent the exchange of information relating to savings banks and the business thereof with the representatives of the agencies of this State, other states, or of the United States, or with reserve or insuring agencies for savings banks. The private business and affairs of an individual or company shall not be disclosed by any person employed by the Division, any member of the Commission, or by any person with whom information is exchanged under the authority of this subsection.~~

~~(e) An official or employee of this State violating this section is liable to any person injured by disclosure of the confidential information for all damages sustained thereby. Penalties provided are not exclusive of other penalties.~~

G.S. 53C-2-7 applies to records of the Office of the Commissioner of Banks pertaining to State savings banks."

SECTION 2.(e) G.S. 54C-101 reads as rewritten:

"§ 54C-101. Directors.

(a) The corporate powers of a State savings bank shall be exercised by, or under the authority of, its board of directors, and the business and affairs of the State savings bank shall be managed by, or under the direction of, its board of directors.

(a1) The directors of a mutual savings bank shall be elected by the members at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's-Directors' terms may be classified in the certificate of incorporation. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which-that a savings bank may choose to prescribe in its bylaws. Voting rights for borrowers shall be fully prescribed in a detailed manner in the bylaws of the savings bank.

(b) The directors of a stock savings bank shall be elected by the stockholders at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's-Directors' terms may be classified in the certificate of incorporation.

~~(c) A director of a State savings bank shall have a significant ownership interest in the State savings bank.~~

(d) A State savings bank shall have no less-fewer than five directors. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law.

(e) The board of directors shall meet at least quarterly, an executive committee shall meet in any month in which there is no meeting of the board of directors, and a loan committee shall meet monthly.

(f) Except to the extent this Chapter or other applicable federal or State law imposes a different standard, State savings bank directors have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes.

(g) The board of directors of a State savings bank may appoint advisory directors to the State savings bank's branches. No advisory director is liable for acts or omissions undertaken as an advisory director under the laws applicable to the performance of the duties of a director of a State savings bank, unless and only to the extent the advisory director undertakes or is delegated authority as a director of the State savings bank."

SECTION 2.(f) G.S. 54C-102 reads as rewritten:

"§ 54C-102. Bylaws.

~~The bylaws and any amendments shall be certified by the appropriate corporate official and submitted to the Commissioner of Banks for approval before they may become effective."~~

SECTION 2.(g) The Commissioner of Banks shall review Chapter 54C (Savings Banks) of the General Statutes and form a drafting group, if appropriate, to prepare updates and revisions to modernize the Chapter or to make recommendations on more fully integrating the supervision of savings banks into Chapter 53C (Regulation of Banks) of the General Statutes. The Commissioner of Banks shall prepare and submit a report on the findings and recommendations to the Joint Legislative Commission on Governmental Operations within one year of the effective date of this act.

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law.