

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2335**

Introduced by

Senators Heckaman, D. Larson, J. Lee, Unruh

Representative Weisz

1 A BILL for an Act to amend and reenact subsection 7 of section 6-08.1-03, sections 12.1-31-07,
2 12.1-31-07.1, and 12.1-31-07.2, and subdivision f of subsection 1 of section 19-03.1-22.2 of the
3 North Dakota Century Code, relating to the definition and endangerment or exploitation of an
4 eligible adult; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 7 of section 6-08.1-03 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 7. For purposes of reporting suspected exploitation of a ~~disabled adult or vulnerable~~
9 ~~elderly~~ an eligible adult as defined by section 12.1-31-07. Nothing in this subsection
10 may be construed to impose upon a financial institution a duty to investigate an
11 alleged or suspected exploitation of a ~~disabled adult or vulnerable elderly~~ an eligible
12 adult or to make ~~any~~ report to a governmental agency or law enforcement agency.

13 **SECTION 2. AMENDMENT.** Section 12.1-31-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **12.1-31-07. Endangering a ~~vulnerable~~ an eligible adult - Penalty.**

16 1. In this chapter, unless the context otherwise requires:

17 a. "Caregiver" means a person who is responsible for the care of a ~~disabled adult or~~
18 ~~vulnerable elderly~~ an eligible adult as a result of a familial or legal relationship, or
19 a person who has assumed responsibility for the care of a ~~disabled adult or~~
20 ~~vulnerable elderly~~ an eligible adult. The term does not include a licensed health
21 care provider who is acting within the provider's legal scope of practice in
22 providing appropriate care or assistance to a ~~disabled adult or vulnerable elderly~~
23 an eligible adult who is the patient or client of the licensed health care provider.

1 b. ~~"Disabled adult" means a person eighteen years of age or older who suffers from~~
2 ~~a condition of physical or mental incapacitation due to a developmental disability~~
3 ~~or organic brain damage or mental illness or who has one or more physical or~~
4 ~~mental limitations that restrict the person's ability to perform the normal activities~~
5 ~~of daily living.~~

6 e. ~~"Vulnerable elderly adult" means a person sixty years of age or older who is~~
7 ~~suffering from a disease or infirmity associated with advanced age and~~
8 ~~manifested by physical, mental, or emotional dysfunctioning to the extent that the~~
9 ~~person is incapable of adequately providing for the person's own health or~~
10 ~~personal care.~~

11 "Eligible adult" means an individual who is at least sixty-five years old or a
12 vulnerable adult as defined in section 50-25.2-01.

13 c. "Undue influence" means the use of a position of trust and confidence with an
14 eligible adult to exploit or take advantage of that eligible adult through actions or
15 tactics, including emotional, psychological, or legal manipulation.

16 2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly
17 performs an act that causes ~~a disabled adult's or vulnerable elderly~~an eligible adult's
18 life to be endangered, health to be injured, or pre-existing physical or mental condition
19 to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are
20 necessary to maintain or preserve the life or health of the ~~disabled adult or vulnerable~~
21 ~~elderly~~eligible adult and the failure causes the ~~disabled adult's or vulnerable elderly~~
22 eligible adult's life to be endangered, health to be injured, or pre-existing physical or
23 mental condition to deteriorate, is guilty of a class B felony.

24 **SECTION 3. AMENDMENT.** Section 12.1-31-07.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-31-07.1. Exploitation of a ~~vulnerable~~an eligible adult - Penalty.**

27 1. A person is guilty of exploitation of ~~a disabled adult or vulnerable elderly~~an eligible
28 adult if:

29 a. The person stands in a position of trust and confidence or has a business
30 relationship with the ~~disabled adult or vulnerable elderly~~eligible adult and
31 knowingly, by deception ~~or~~, intimidation, or undue influence, obtains or uses, or

- 1 attempts to obtain or use, the ~~disabled adult's or vulnerable elderly~~eligible adult's
2 funds, assets, or property with the intent to temporarily or permanently deprive
3 the ~~disabled adult or vulnerable elderly~~eligible adult of the use, benefit, or
4 possession of the property, for the benefit of someone other than the ~~disabled-~~
5 ~~adult or vulnerable elderly~~eligible adult; or
- 6 b. The person knows that the ~~disabled adult or vulnerable elderly~~eligible adult lacks
7 the capacity to consent, and obtains or uses, or attempts to obtain or use, or
8 assists another in obtaining or using or attempting to obtain or use, the ~~disabled-~~
9 ~~adult's or vulnerable elderly~~eligible adult's funds, assets, or property with the
10 intent to temporarily or permanently deprive the ~~disabled adult or vulnerable-~~
11 ~~elderly~~eligible adult of the use, benefit, or possession of the property for the
12 benefit of someone other than the ~~disabled adult or vulnerable elderly~~eligible
13 adult.
- 14 2. Exploitation of a ~~disabled adult or vulnerable elderly~~an eligible adult is:
- 15 a. A class A felony if the value of the exploited funds, assets, or property exceeds
16 fifty thousand dollars.
- 17 b. A class B felony if the value of the exploited funds, assets, or property exceeds
18 ten thousand dollars but does not exceed fifty thousand dollars.
- 19 c. A class C felony if the value of the exploited funds, assets, or property is in
20 excess of one thousand dollars but does not exceed ten thousand dollars.
- 21 d. A class A misdemeanor if the value of the exploited funds, assets, or property
22 does not exceed one thousand dollars.
- 23 3. It is not a defense to a prosecution of a violation of this section that the accused did
24 not know the age of the victim.
- 25 4. This section does not impose criminal liability on a person who has:
- 26 a. Managed the ~~disabled adult's or vulnerable elderly~~eligible adult's funds, assets,
27 or property in a manner that clearly gives primacy to the needs and welfare of
28 that person or is consistent with any explicit written authorization; or
- 29 b. Made a good-faith effort to assist in the management of the ~~disabled adult's or-~~
30 ~~vulnerable elderly~~eligible adult's funds, assets, or property.

1 **SECTION 4. AMENDMENT.** Section 12.1-31-07.2 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-31-07.2. Criminal proceeding involving a ~~vulnerable~~ eligible adult - Speedy**
4 **trial.**

5 In a criminal proceeding in which a ~~disabled adult or vulnerable elderly~~ eligible adult is a
6 victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to
7 minimize the length of time the ~~disabled adult or vulnerable elderly~~ eligible adult must endure the
8 stress of involvement in the proceedings. In ruling on ~~any~~ a motion or other request for a delay
9 or a continuance of proceedings, the court shall consider and give weight to any adverse impact
10 the delay or continuance may have on the well-being of the ~~disabled adult or vulnerable-~~
11 ~~elderly~~ eligible adult.

12 **SECTION 5. AMENDMENT.** Subdivision f of subsection 1 of section 19-03.1-22.2 of the
13 North Dakota Century Code is amended and reenacted as follows:

14 f. "Vulnerable adult" means either a ~~disabled adult or vulnerable elderly~~ adult as
15 ~~these terms are~~ the term is defined in section ~~12.1-31-07~~ 50-25.2-01.