

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2335
(Senators Heckaman, D. Larson, J. Lee, Unruh)
(Representative Weisz)

AN ACT to amend and reenact subsection 7 of section 6-08.1-03, sections 12.1-31-07, 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 North Dakota Century Code, relating to the definition and endangerment or exploitation of an eligible adult; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. In this chapter, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to ~~a disabled adult or vulnerable elderly~~ an eligible adult who is the patient or client of the licensed health care provider.
 - b. "~~Disabled adult~~" means ~~a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.~~
 - e. "~~Vulnerable elderly adult~~" means ~~a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.~~

"Eligible adult" means an individual who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.
 - c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation.
2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes ~~a disabled adult's or vulnerable elderly~~ an eligible adult's life to be

endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the ~~disabled adult or vulnerable elderly~~ eligible adult and the failure causes the ~~disabled adult's or vulnerable elderly~~ eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, is guilty of a class B felony.

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

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

1. A person is guilty of exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult if:
 - a. The person stands in a position of trust and confidence or has a business relationship with the ~~disabled adult or vulnerable elderly~~ eligible adult and knowingly, by deception or, intimidation, or undue influence, obtains or uses, or attempts to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property, for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult; or
 - b. The person knows that the ~~disabled adult or vulnerable elderly~~ eligible adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult.
2. Exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult is:
 - a. A class A felony if the value of the exploited funds, assets, or property exceeds fifty thousand dollars.
 - b. A class B felony if the value of the exploited funds, assets, or property exceeds ten thousand dollars but does not exceed fifty thousand dollars.
 - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed ten thousand dollars.
 - d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
 - a. Managed the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
 - b. Made a good-faith effort to assist in the management of the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property.

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2335.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 88 Nays 4 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State