

FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1112

Introduced by

Representatives Brown, Martin, Wald

Senators Urlacher, Goetz

1 A BILL for an Act to create and enact two new sections to chapter 12.1-31 of the North Dakota
2 Century Code, relating to the exploitation of a disabled or vulnerable elderly adult; to amend
3 and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the definition of
4 disabled or vulnerable elderly adult; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-31-07 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **12.1-31-07. Endangering a vulnerable ~~elderly~~ adult - Penalty.**

9 1. In this ~~section~~ chapter, unless the context otherwise requires:

- 10 a. "Caregiver" means a person who is responsible for the care of a disabled
11 adult or vulnerable elderly adult as a result of a familial or legal relationship,
12 or a person who has assumed responsibility for the care of a disabled adult or
13 vulnerable elderly adult. The term does not include a licensed health care
14 provider who is acting within the provider's legal scope of practice in providing
15 appropriate care or assistance to a disabled adult or vulnerable elderly adult
16 who is the patient or client of the licensed health care provider.
- 17 b. "Disabled adult" means a person eighteen years of age or older who suffers
18 from a condition of physical or mental incapacitation due to a developmental
19 disability or organic brain damage or mental illness or who has one or more
20 physical or mental limitations that restrict the person's ability to perform the
21 normal activities of daily living.
- 22 c. "Vulnerable elderly adult" means a person sixty years of age or older who is
23 suffering from a disease or infirmity associated with advanced age and
24 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.

2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting 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 adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class C felony.

SECTION 2. Two new sections to chapter 12.1-31 of the North Dakota Century Code are created and enacted as follows:

Exploitation of a vulnerable adult - Penalty.

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly 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 adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
 - b. The person knows that the disabled adult or vulnerable elderly 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 adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
2. Exploitation of a disabled adult or vulnerable elderly adult is:

- 1 a. A class A felony if the value of the exploited funds, assets, or property
2 exceeds one hundred thousand dollars.
- 3 b. A class B felony if the value of the exploited funds, assets, or property
4 exceeds twenty thousand dollars but does not exceed one hundred thousand
5 dollars.
- 6 c. A class C felony if the value of the exploited funds, assets, or property is in
7 excess of one thousand dollars but does not exceed twenty thousand dollars.
- 8 3. It is not a defense to a prosecution of a violation of this section that the accused
9 did not know the age of the victim.
- 10 4. This section does not impose criminal liability on a person who has:
 - 11 a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or
12 property in a manner that clearly gives primacy to the needs and welfare of
13 that person or is consistent with any explicit written authorization; or
 - 14 b. Made a good faith effort to assist in the management of the disabled adult's or
15 vulnerable elderly adult's funds, assets, or property.
- 16 **Criminal proceeding involving a vulnerable adult - Speedy trial.** In a criminal
17 proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and state's
18 attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the
19 disabled adult or vulnerable elderly adult must endure the stress of involvement in the
20 proceedings. In ruling on any motion or other request for a delay or a continuance of
21 proceedings, the court shall consider and give weight to any adverse impact the delay or
22 continuance may have on the well-being of the disabled adult or vulnerable elderly adult.