

**Amendment - 1st Reading-white - Requested by: Dennis Lenz - (S) Public Health, Welfare and Safety**

- 2023

68th Legislature 2023

Drafter: Madelyn Krezowski,

SB0034.001.001

1 SENATE BILL NO. 34  
2 INTRODUCED BY R. LYNCH  
3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE  
6 PROTECTION OF VULNERABLE ADULTS; REVISING TERMINOLOGY RELATED TO PROTECTIVE  
7 SERVICES; DEFINING "VULNERABLE ADULT"; REQUIRING ADDITIONAL PROFESSIONALS TO REPORT  
8 ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; PROVIDING A  
9 PENALTY FOR FALSE REPORTING; AND AMENDING SECTIONS 30-14-144, 32-1-1501, 32-1-1502, 32-1-  
10 1503, 32-1-1504, 42-3-204, 45-6-333, 46-16-222, 50-5-1104, 52-1-103, 52-3-201, 52-3-202, 52-3-203, 52-3-  
11 204, 52-3-206, 52-3-207, 52-3-801, 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-  
12 3-814, 52-3-815, 52-3-821, AND 52-3-825, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **Section 1.** Section 30-14-144, MCA, is amended to read:

17 **"30-14-144. Additional penalty for unfair or deceptive act committed against ~~elder person or~~**  
18 **~~developmentally disabled person~~ vulnerable adult.** (1) In addition to any civil penalty imposed pursuant to  
19 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated  
20 against an ~~elder person or against a developmentally disabled person~~ a vulnerable adult is liable for an  
21 additional civil penalty not to exceed \$10,000 for each violation if the court finds that:

22 (a) the person knew or should have known that the person's conduct was directed toward one or  
23 more ~~elder or developmentally disabled persons~~ vulnerable adults; or

24 (b) the person's conduct caused an ~~elder or developmentally disabled person~~ a vulnerable adult to  
25 suffer one of the following:

- 26 (i) loss or encumbrance of a primary residence;
- 27 (ii) loss of principal employment or other source of income;

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- 1 (iii) substantial loss of property set aside for retirement or for personal or family care and  
2 maintenance;
- 3 (iv) substantial loss of payments received under a pension or retirement plan or a government  
4 benefits program; or
- 5 (v) loss of assets essential to the health or welfare of the ~~elder or disabled person~~ vulnerable adult.
- 6 (2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil  
7 penalties ordered by the court under this section.
- 8 ~~(3) As used in this section:~~
- 9 ~~(a) "developmentally disabled person" means a person with a developmental disability as defined in~~  
10 ~~53-20-102 ; and~~
- 11 ~~(b) "older person" has the meaning provided in 52-3-803.~~
- 12 (3) As used in this section, "vulnerable adult" has the meaning provided in 52-3-803."

14 **Section 2.** Section 32-1-1501, MCA, is amended to read:

15 **"32-1-1501. Definitions.** For the purposes of this part, the following definitions apply:

16 (1) "Covered agency" means any of the following:

17 (a) a federal, state, or local law enforcement agency; or

18 (b) the department of public health and human services as provided in 2-15-2201 or its local  
19 affiliate.

20 (2) "Covered financial institution" means any bank, credit union, savings bank, savings and loan  
21 association, or trust company operating in Montana.

22 (3) "Financial exploitation" means:

23 (a) the unreasonable use of ~~an older person or a person with a developmental disability a~~  
24 vulnerable adult or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with  
25 regard to ~~an older person or a person with a developmental disability a vulnerable adult~~ in order to obtain  
26 control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the  
27 ~~person's~~ vulnerable adult's money, assets, rights, credit accounts, or property by means of deception, duress,

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1 menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the ~~older~~  
2 ~~person or person with a developmental disability~~ vulnerable adult of the ownership, use, benefit, or possession  
3 of or interest in the ~~person's~~ vulnerable adult's money, assets, rights, credit accounts, or property;

4 (b) an act taken by a person who has the trust and confidence of ~~an older person or of a person~~  
5 ~~with a developmental disability~~ a vulnerable adult to obtain control of or to divert to the advantage of another the  
6 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, rights,  
7 credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation  
8 with the intent or result of permanently depriving the ~~older person or person with a developmental disability~~  
9 vulnerable adult of the ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's  
10 money, assets, rights, credit accounts, or property; or

11 (c) the unreasonable use of ~~an older person or a person with a developmental disability~~ a  
12 vulnerable adult or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with  
13 regard to ~~an older person or a person with a developmental disability~~ a vulnerable adult done in the course of  
14 an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another  
15 the ownership, use, benefit, or possession of the ~~person's~~ vulnerable adult's money, assets, rights, credit  
16 accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the  
17 intent or result of permanently depriving the ~~older person or person with a developmental disability~~ vulnerable  
18 adult of the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or  
19 property.

20 ~~(4) "Older person" means a person who is at least 60 years of age.~~

21 ~~(5) "Person with a developmental disability" means a person 18 years of age or older who has a~~  
22 ~~developmental disability, as defined in 53-20-102.~~

23 ~~(6)~~(4) "Transaction" means any of the following as applicable to services provided by a covered  
24 financial institution:

25 (a) a transfer or request to transfer or disburse funds or assets in an account;

26 (b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a  
27 money order, cashier's check, or official check;

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- 1 (c) a request to negotiate a check or other negotiable instrument;
- 2 (d) a request to change the ownership of, or access to, an account;
- 3 (e) a request to sell or transfer securities or other assets, or a request to affix a medallion stamp or
- 4 provide any form of guarantee or endorsement in connection with an attempt to sell or transfer securities or
- 5 other assets, if the person selling or transferring the securities or assets is not required to register under 30-10-
- 6 201;
- 7 (f) a request for a loan, extension of credit, or draw on a line of credit;
- 8 (g) a request to encumber any movable or immovable property; and
- 9 (h) a request to designate or change the designation of beneficiaries to receive any property,
- 10 benefit, or contract right for ~~an older person or a person with a developmental disability~~ a vulnerable adult at
- 11 death.

12 (5) "Vulnerable adult" has the meaning provided in 52-3-803."

13  
14 **Section 3.** Section 32-1-1502, MCA, is amended to read:

15 **"32-1-1502. Notices.** (1) A covered financial institution may notify any covered agency if the covered  
16 financial institution believes that the financial exploitation of ~~an older person or a person with a developmental~~  
17 disability a vulnerable adult is occurring, has or may have occurred, is being attempted, or has been or may  
18 have been attempted.

19 (2) A covered financial institution may notify any third party reasonably associated with ~~an older~~  
20 person or a person with a developmental disability a vulnerable adult if the covered financial institution believes  
21 that the financial exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult is  
22 occurring, has or may have occurred, is being attempted, or has been or may have been attempted. A third  
23 party reasonably associated with ~~an older person or a person with a developmental disability~~ a vulnerable adult  
24 includes but is not limited to the following:

25 (a) a parent, spouse, adult child, sibling, or other known family member or close associate of ~~an~~  
26 older person or a person with a developmental disability a vulnerable adult;

27 (b) an authorized contact provided by ~~an older person or a person with a developmental disability~~

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1 a vulnerable adult to the covered financial institution;

2 (c) a co-owner, additional authorized signatory, or beneficiary on ~~an older person or a person with~~

3 ~~a developmental disability's~~ a vulnerable adult's account; and

4 (d) an attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected by

5 the ~~older person, a person with a developmental disability~~ vulnerable adult, a court, a governmental agency, or

6 a third party to manage some or all of the financial affairs of the ~~older person or person with a developmental~~

7 ~~disability~~ vulnerable adult.

8 (3) A covered financial institution may choose not to notify any third party reasonably associated

9 with ~~an older person or a person with a developmental disability~~ a vulnerable adult of suspected financial

10 exploitation of the ~~older person or person with a developmental disability~~ vulnerable adult if the covered

11 financial institution believes the third party is, may be, or may have been engaged in the financial exploitation of

12 the ~~older person or person with a developmental disability~~ vulnerable adult.

13 (4) A covered financial institution shall make a reasonable effort, at least annually, to notify the

14 appropriate employees of the covered financial institution of their ability to report potential financial exploitation

15 of ~~an older person or a person with a developmental disability~~ a vulnerable adult to personnel within the

16 covered financial institution."

17

18 **Section 4.** Section 32-1-1503, MCA, is amended to read:

19 **"32-1-1503. Delaying transactions.** (1) A covered financial institution may, but is not required to,

20 delay completion or execution of a transaction involving an account of ~~an older person or a person with a~~

21 ~~developmental disability~~ a vulnerable adult, an account on which ~~an older person or a person with a~~

22 ~~developmental disability~~ a vulnerable adult is a beneficiary, an account in which the ~~older person or a person~~

23 ~~with a developmental disability~~ vulnerable adult has a financial interest, or an account of a person suspected of

24 perpetrating financial exploitation if either of the following conditions apply:

25 (a) the covered financial institution reasonably believes that the requested transaction may result

26 in financial exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult; or

27 (b) a covered agency provides information demonstrating to the financial institution that it is

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1 reasonable to believe that financial exploitation is occurring, has or may have occurred, is being attempted, or  
2 has been or may have been attempted.

3 (2) If a covered financial institution delays a transaction pursuant to subsection (1), the covered  
4 financial institution shall, no later than 2 business days after the transaction is delayed, send written notification  
5 of the delay and the reason for the delay to all parties authorized to transact business on the account for which  
6 the covered financial institution has contact information unless any party is reasonably believed to have  
7 engaged in attempted financial exploitation of the ~~older person or a person with a developmental disability~~  
8 vulnerable adult. The notification described in this subsection may be provided by electronic means.

9 (3) If a covered financial institution delays a transaction pursuant to subsection (1), the covered  
10 financial institution may provide notification of the delay, the reason for the delay, and any additional information  
11 about the transaction to any covered agency.

12 (4) Except as ordered by a court, a covered financial institution is not required to delay a  
13 transaction when provided with information by a covered agency alleging that financial exploitation is occurring,  
14 has or may have occurred, is being attempted, or has been or may have been attempted but may use its  
15 discretion to determine whether to delay a transaction based on the information available to the covered  
16 financial institution.

17 (5) Except as provided in subsection (6), any delay of a transaction as authorized pursuant to this  
18 section expires or is terminated when the earliest of either of the following circumstances occur:

19 (a) the covered financial institution reasonably determines that the transaction will not result in  
20 financial exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult; or

21 (b) 15 business days pass from the date on which the covered financial institution first initiated the  
22 delay of the transaction.

23 (6) (a) A covered financial institution may extend the delay provided for in subsection (5) upon  
24 receiving a request to extend the delay from any covered agency, in which case the delay expires or is  
25 terminated no later than 25 business days from the date on which the covered financial institution first initiated  
26 the delay of the transaction.

27 (b) A court of competent jurisdiction may enter an order extending or shortening a delay or

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1 providing other relief based on the petition of the covered financial institution, any covered agency, or other  
2 interested party."

3

4 **Section 5.** Section 32-1-1504, MCA, is amended to read:

5 **"32-1-1504. Immunity.** (1) (a) A covered financial institution and its directors, officers, employees,  
6 attorneys, accountants, agents, and other representatives have no duty to act pursuant to this part or otherwise  
7 to protect ~~an older person or a person with a developmental disability~~ a vulnerable adult from financial  
8 exploitation by a third person.

9 (b) A covered financial institution and its directors, officers, employees, attorneys, accountants,  
10 agents, and other representatives are immune from all criminal, civil, and administrative liability for not taking  
11 action pursuant to this part.

12 (c) A covered financial institution and its directors, officers, employees, attorneys, accountants,  
13 agents, or other representatives who choose to act pursuant to the authority granted in this part are immune  
14 from all criminal, civil, and administrative liability for any act taken pursuant to this part unless the act of the  
15 financial institution or its representatives was done in bad faith and caused pecuniary loss to ~~an older person or~~  
16 a person with a developmental disability a vulnerable adult who was suspected of being a victim of financial  
17 exploitation.

18 (2) The immunity provided for in this section may not extend to any individual in a case when the  
19 individual is a principal, a conspirator, or an accessory after the fact to a criminal offense involving the financial  
20 exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult."

21

22 **Section 6.** Section 42-3-204, MCA, is amended to read:

23 **"42-3-204. Contents of preplacement evaluation.** (1) The preplacement evaluation report must  
24 contain the following information if available:

25 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

26 (b) marital status and family history, including the age and location of any child of the individual  
27 and the identity of and relationship to anyone else living in the individual's household;