

SENATE BILL NO. 347—SENATOR DENIS

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Authorizes the issuance of a subpoena to compel the production of certain financial records as part of an investigation of the exploitation of an older person. (BDR 15-1075)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to older persons; authorizing the issuance of a subpoena to compel the production of certain financial records and other documents in an investigation of the exploitation of an older person under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires certain persons who have reasonable cause to believe that
2 an older person has been abused, neglected, exploited or isolated to report the
3 abuse, neglect, exploitation or isolation of the older person to the Aging and
4 Disability Services Division of the Department of Health and Human Services, or a
5 local office thereof, a police department, sheriff's office or a county's office for
6 protective services. (NRS 200.5093) The exploitation of an older person consists of
7 wrongfully depriving the older person of the ownership, use, benefit or possession
8 of his or her money, assets or property. (NRS 200.5092) This bill authorizes the
9 Administrator of the Division or the executive head of an office or department that
10 is investigating a report of the exploitation of an older person to issue an
11 administrative subpoena to compel the production of financial records or other
12 documents relating to the older person which are in the possession of a bank or
13 other financial institution, savings and loan association, thrift company or credit
14 union.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

If the Aging and Disability Services Division of the Department of Health and Human Services or a local office thereof, a police department or sheriff's office, or a county office for protective services investigates a report of the exploitation of an older person made pursuant to NRS 200.5093, the Administrator of the Division or the executive head of the department or office may issue a subpoena to compel the production of financial records or other documents relating to the older person by a:

1. Financial institution subject to the provisions of any chapter of title 55 of NRS;

2. Savings and loan association subject to the provisions of chapter 673 of NRS;

3. Thrift company subject to the provisions of chapter 677 of NRS; or

4. Credit union subject to the provisions of chapter 678 of NRS.

Sec. 2. NRS 200.5092 is hereby amended to read as follows:

200.5092 As used in NRS 200.5091 to 200.50995, inclusive, **and section 1 of this act**, unless the context otherwise requires:

1. "Abuse" means willful and unjustified:

(a) Infliction of pain, injury or mental anguish on an older person or a vulnerable person; or

(b) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.

2. "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:

(a) Obtain control, through deception, intimidation or undue influence, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property; or

(b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.

➔ As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another.



3. "Isolation" means willfully, maliciously and intentionally preventing an older person or a vulnerable person from having contact with another person by:

(a) Intentionally preventing the older person or vulnerable person from receiving visitors, mail or telephone calls, including, without limitation, communicating to a person who comes to visit the older person or vulnerable person or a person who telephones the older person or vulnerable person that the older person or vulnerable person is not present or does not want to meet with or talk to the visitor or caller knowing that the statement is false, contrary to the express wishes of the older person or vulnerable person and intended to prevent the older person or vulnerable person from having contact with the visitor; or

(b) Physically restraining the older person or vulnerable person to prevent the older person or vulnerable person from meeting with a person who comes to visit the older person or vulnerable person.

➤ The term does not include an act intended to protect the property or physical or mental welfare of the older person or vulnerable person or an act performed pursuant to the instructions of a physician of the older person or vulnerable person.

4. "Neglect" means the failure of:

(a) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person or who has voluntarily assumed responsibility for his or her care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or

(b) An older person or a vulnerable person to provide for his or her own needs because of inability to do so.

5. "Older person" means a person who is 60 years of age or older.

6. "Protective services" means services the purpose of which is to prevent and remedy the abuse, neglect, exploitation and isolation of older persons. The services may include investigation, evaluation, counseling, arrangement and referral for other services and assistance.

7. "Vulnerable person" means a person 18 years of age or older who:

(a) Suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or

(b) Has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living.



Sec. 3. NRS 200.50984 is hereby amended to read as follows:

200.50984 1. Notwithstanding any other statute to the contrary, the local office of the Aging and Disability Services Division of the Department of Health and Human Services and a county's office for protective services, if one exists in the county where a violation is alleged to have occurred, may for the purpose of investigating an alleged violation of NRS 200.5091 to 200.50995, inclusive, *and section 1 of this act* inspect all records pertaining to the older person on whose behalf the investigation is being conducted, including, but not limited to, that person's medical and financial records.

2. Except as otherwise provided in this subsection ~~H~~ *and section 1 of this act*, if a guardian has not been appointed for the older person, the Aging and Disability Services Division or the county's office for protective services shall obtain the consent of the older person before inspecting those records. If the Aging and Disability Services Division or the county's office for protective services determines that the older person is unable to consent to the inspection, the inspection may be conducted without his or her consent. Except as otherwise provided in this subsection ~~H~~ *and section 1 of this act*, if a guardian has been appointed for the older person, the Aging and Disability Services Division or the county's office for protective services shall obtain the consent of the guardian before inspecting those records. If the Aging and Disability Services Division or the county's office for protective services has reasonable cause to believe that the guardian is abusing, neglecting, exploiting or isolating the older person, the inspection may be conducted without the consent of the guardian, except that if the records to be inspected are in the personal possession of the guardian, the inspection must be approved by a court of competent jurisdiction.

