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1 A bill to be entitled

2 An act relating to financial exploitation of elderly
3 persons; creating ss. 410.701-410.706, F.S.; providing a
4 popular name; providing legislative intent; providing
5 definitions; making financial exploitation of an elderly
6 person unlawful; providing for a civil action for actual
7 and punitive damages; providing for an award of attorney's
8 fees; providing continued jurisdiction of the court in the
9 event of the death of the elderly person; authorizing the
10 Attorney General to investigate, administer oaths,
11 subpoena witnesses, or bring a civil action under certain
12 circumstances; providing for the award of costs of such
13 action to the Attorney General; providing for the elderly
14 person to request an advance on the trial docket; limiting
15 available damages; limiting available defenses; providing
16 limitation on the possibility of a waiver; limiting
17 punitive damages; requiring deposit of a portion of any
18 punitive damage award into a certain trust fund; requiring
19 the Department of Revenue to collect and deposit payments;
20 providing for proportionate shares of punitive damages
21 under certain circumstances; requiring the Department of
22 Elderly Affairs to develop educational initiatives to
23 educate certain persons; creating s. 825.1035, F.S.;
24 providing a definition; providing criminal penalties for
25 committing financial exploitation of an elderly person;
26 requiring the Governor to appoint a financial security
27 task force and providing duties thereof; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Section 410.701, Florida Statutes, is created
 33 to read:

34 410.701 Popular name.--Sections 410.701-410.706 may be
 35 referred to by the popular name the "Financial Protection for
 36 the Elderly Act of 2004."

37 Section 2. Section 410.702, Florida Statutes, is created
 38 to read:

39 410.702 Legislative intent.--The Legislature recognizes
 40 that elderly persons are frequent victims of deceptive and
 41 unfair acts and business practices and are often unusually
 42 vulnerable to such conduct. The purpose of ss. 410.701-410.706
 43 is to protect elderly persons from being exploited financially
 44 by giving elderly persons means to recover damages from those
 45 engaging in deceptive and unfair activities against them.

46 Section 3. Section 410.703, Florida Statutes, is created
 47 to read:

48 410.703 Definitions.--As used in ss. 410.701-410.706, the
 49 term:

50 (1) "Deception" means a false or misleading
 51 representation, omission, or concealment of a material fact
 52 relating to services rendered to, disposition of property of, or
 53 the use of property belonging to or intended for the benefit of
 54 an elderly person.

55 (2) "Department" means the Department of Elderly Affairs.

56 (3) "Elderly person" means a person over the age of 60 who
 57 resides in this state.

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58 (4) "Fiduciary relationship" means a relationship in which
 59 an elderly person has entrusted a person with the use or
 60 management of the funds, property, or other assets of the
 61 elderly person. The relationship exists where there is a special
 62 confidence reposed in one who in equity and good conscience is
 63 bound to act in good faith and with due regard to the interests
 64 of the elderly person. For the purposes of ss. 410.701-410.706,
 65 a fiduciary relationship may be formed by an informal agreement
 66 between the elderly person and the other person and does not
 67 require a formal declaration or court order for its existence.

68 (5) "Financial exploitation" means to obtain or use, or
 69 endeavor to obtain or use, by deception or intimidation, an
 70 elderly person's funds, assets, or property with the intent to
 71 permanently separate an elderly person from such funds, assets,
 72 or property. Financial exploitation includes any act in
 73 furtherance of the causing, bringing about, participation in,
 74 aiding, or abetting of the financial exploitation of an elderly
 75 person.

76 (6) "Financial institution" includes a bank, bank holding
 77 company, credit card bank, banking organization, savings
 78 association, trust company, credit union, investment company,
 79 insurance company, or money market mutual fund.

80 (7) "Intimidation" means the communication by word or act
 81 to an elderly person that he or she will be deprived of food,
 82 nutrition, clothing, shelter, medicine, medical services, money,
 83 or financial support or will suffer physical violence, which
 84 communication a person could reasonably infer was intended to
 85 frighten, coerce, or forcibly compel the elderly person.

86 (8) "Obtains or uses" means any manner of:

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87 (a) Taking or exercising control over funds, property, or
 88 assets; or

89 (b) Making any use, disposition, or transfer of funds,
 90 property, or assets.

91 Section 4. Section 410.704, Florida Statutes, is created
 92 to read:

93 410.704 Financial exploitation; civil action.--

94 (1) Financial exploitation of an elderly person by a
 95 financial institution or its subsidiary which has a fiduciary or
 96 legal relationship with the elderly person is unlawful and
 97 against the public policy of this state.

98 (2) Any elderly person who suffers injury or loss as a
 99 result of a violation of this section may bring an action in any
 100 court of competent jurisdiction for actual damages and, if
 101 appropriate, punitive damages. A plaintiff who prevails in any
 102 such action may be entitled to recover reasonable attorney's
 103 fees and costs of the action. Nothing in this section shall
 104 prevent the application of s. 57.105 in assessing attorney's
 105 fees against a plaintiff.

106 (3) No attorney's fees may be paid by a claimant for
 107 services related to this section or awarded to the plaintiff
 108 under this section in excess of a maximum fee calculated in
 109 accordance with the lodestar process approved by the Florida
 110 Supreme Court. Such maximum fee shall be set by the
 111 determination of the number of hours reasonably expended on the
 112 matter and the reasonable hourly rate for the services provided
 113 by the attorney. In contingent fee matters, the lodestar figure
 114 calculated may include a reasonable contingency risk multiplier

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115 not greater than 4. Attorney's fees may also include
116 reimbursement for reasonable costs and expenses.

117 (4) A court shall not lose jurisdiction of any claim for
118 relief under this section due to the death of the elderly
119 person. An action may be brought by the elderly person, or that
120 person's guardian, by a person or organization acting on behalf
121 of the elderly person with the consent of that person or that
122 person's guardian, or by the personal representative, executor,
123 or trustee of the estate of a deceased elderly person.

124 (5) Notwithstanding any other provision of law, the
125 Attorney General may:

126 (a) Conduct an investigation, administer oaths, and
127 subpoena witnesses or matter if the Attorney General has reason
128 to believe that a person has engaged in, or is engaging in, an
129 act or practice involving financial exploitation of an elderly
130 person.

131 (b) Bring a civil action in circuit court for actual
132 damages, restitution, or injunctive, declaratory, or other
133 appropriate equitable relief on behalf of an elderly person who
134 has suffered a loss as a result of a violation of this section.

135 (6) In the case of any successful action brought by the
136 Attorney General under this section, the costs of the action,
137 together with a reasonable attorney's fee, shall be awarded to
138 the Attorney General. Any moneys received by the Attorney
139 General for attorney's fees and costs of investigation or
140 litigation in enforcement of this section shall be deposited in
141 the Elder Victims Trust Fund, if created by law.

142 (7) In an action under this section in which an elderly
143 person is a party, the elderly person may move the court to

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144 advance the trial on the docket. The presiding judge, after
 145 consideration of the age and health of the party, may advance
 146 the trial on the docket. The motion may be filed and served with
 147 the initial complaint or at any time thereafter.

148 (8) The rights and remedies provided in ss. 410.701-
 149 410.706 are in addition to and cumulative with other legal and
 150 administrative remedies available to an elderly person, except a
 151 party may not recover damages under this section in addition to
 152 damages under s. 772.11.

153 (9) Lack of knowledge of the elderly person's age does not
 154 constitute a defense to a cause of action brought under ss.
 155 410.701-410.706.

156 (10) Any waiver by an elderly person of the provisions of
 157 ss. 410.701-410.706 or any relief or remedies provided to any
 158 elderly person in ss. 410.701-410.706 shall be unenforceable and
 159 void.

160 Section 5. Section 410.705, Florida Statutes, is created
 161 to read:

162 410.705 Punitive damages; limitation; allocation.--

163 (1) An award of punitive damages may not exceed the
 164 greater of:

165 (a) Three times the amount of compensatory damages awarded
 166 to each claimant entitled thereto, consistent with the remaining
 167 provisions of this section; or

168 (b) The sum of \$1 million.

169 (2) This section is not intended to prohibit an
 170 appropriate court from exercising its jurisdiction under s.
 171 768.74 in determining the reasonableness of an award of punitive

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172 damages that is less than three times the amount of compensatory
173 damages.

174 (3) A jury may not be instructed or informed as to the
175 provisions of this section.

176 (4) Notwithstanding any other law to the contrary, the
177 amount of punitive damages awarded pursuant to this section
178 shall be equally divided between the claimant and the Elder
179 Victims Trust Fund, if created by law, in accordance with the
180 following provisions:

181 (a) The clerk of court shall transmit a copy of the jury
182 verdict to the Chief Financial Officer by certified mail. In the
183 final judgment, the court shall order the percentages of the
184 award, payable as provided herein.

185 (b) A settlement agreement entered into between the
186 original parties to the action after a verdict has been returned
187 must provide a proportionate share payable to the Elder Victims
188 Trust Fund, if created by law. For purposes of this paragraph, a
189 proportionate share is a 50-percent share of that percentage of
190 the settlement amount which the punitive damages portion of the
191 verdict bore to the total of the compensatory and punitive
192 damages in the verdict.

193 (c) The Department of Revenue shall collect or cause to be
194 collected all payments due the state under this section. Such
195 payments shall be deposited in the Elder Victims Trust Fund, if
196 created by law.

197 (d) If the full amount of punitive damages awarded cannot
198 be collected, the claimant and the other recipients designated
199 pursuant to this subsection are each entitled to a proportionate
200 share of the punitive damages collected.

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201 Section 6. Section 410.706, Florida Statutes, is created
 202 to read:

203 410.706 Exploitation of elderly persons; educational
 204 initiatives.--The department shall develop and implement
 205 statewide educational initiatives to inform elderly persons, law
 206 enforcement officers, members of the judicial system, social
 207 services professionals, and the general public of the prevalence
 208 of and methods for preventing deceptive and unfair acts or
 209 practices that victimize elderly persons, and to inform these
 210 groups of the provisions of this chapter, chapter 415, and ss.
 211 772.11, 775.0844, and 812.0145 and the rights and remedies
 212 available to elderly persons.

213 Section 7. Section 825.1035, Florida Statutes, is created
 214 to read:

215 825.1035 Financial exploitation of elderly persons.--

216 (1) "Financial exploitation of an elderly person" means
 217 knowingly, by deception or intimidation, obtaining or using, or
 218 endeavoring to obtain or use, the funds, assets, or property of
 219 an elderly person with the intent to temporarily or permanently
 220 deprive the elderly person of the use, benefit, or possession of
 221 the funds, assets, or property, or for the benefit of someone
 222 other than the elderly person, by a person who has a business
 223 relationship with the elderly person.

224 (2)(a) If the funds, assets, or property involved in the
 225 exploitation of the elderly person are valued at \$100,000 or
 226 more, the offender commits a felony of the second degree,
 227 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

228 (b) If the funds, assets, or property involved in the
 229 exploitation of the elderly person are valued at \$20,000 or

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230 more, but less than \$100,000, the offender commits a felony of
 231 the third degree, punishable as provided in s. 775.082, s.
 232 775.083, or s. 775.084.

233 (c) If the funds, assets, or property involved in the
 234 exploitation of the elderly person are valued at less than
 235 \$20,000, the offender commits a misdemeanor of the first degree,
 236 punishable as provided in s. 775.082 or by a fine of not more
 237 than \$5,000, or both.

238 Section 8. The Governor shall appoint a financial security
 239 task force for elderly persons, to be established within the
 240 Department of Elderly Affairs, to make recommendations to the
 241 Legislature, on or before January 1, 2005, for the establishment
 242 of a program to identify and certify commercial organizations
 243 that take significant affirmative steps to protect elderly
 244 persons from fraud, deceit, and other harms that often arise out
 245 of an elderly person's unique position in the marketplace. The
 246 task force should focus on financial and similar institutions
 247 and fiduciary enterprises that assume responsibility for the
 248 holding or management of funds, property, or assets of elderly
 249 persons, as well as those who provide professional services to
 250 elderly persons. The task force shall investigate whether it
 251 would be advisable to identify or establish standards or best
 252 practices for organizations to adopt and follow that might
 253 protect elderly persons from fraud and deceit and from incidents
 254 of misuse of the personal and financial information of elderly
 255 persons. The objective of the recommendations should be to
 256 enable commercial organizations to maintain and publicize a
 257 business policy protective of the interests of elderly persons
 258 and to empower elderly persons to easily identify those

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259 commercial organizations that will best assist them in
260 protecting their own financial and privacy interests.

261 Section 9. This act shall take effect upon becoming a law.