

By Senators Villalobos and Smith

38-1145-04

1 A bill to be entitled
2 An act relating to elderly persons; providing a
3 short title; creating s. 410.701, F.S.;
4 providing legislative intent; creating s.
5 410.702, F.S.; providing definitions; creating
6 s. 410.703, F.S.; providing that the financial
7 exploitation of an elderly person is unlawful;
8 providing for declaratory or injunctive relief,
9 damages in case of injury or loss, and
10 reasonable attorney's fees and costs; providing
11 jurisdiction in case of death of the elderly
12 person; providing that certain persons may
13 bring an action on behalf of an elderly person
14 under the act; providing for advancement of a
15 trial on the docket; authorizing the Attorney
16 General to conduct an investigation and bring a
17 civil suit in circuit court for a violation of
18 the act; requiring that an award of attorney's
19 fees and costs of the action and investigation
20 by the Attorney General be deposited into the
21 Elder Victims Trust Fund; creating s. 410.704,
22 F.S.; providing that punitive damages may not
23 exceed a certain amount; providing an
24 exception; requiring that punitive damages be
25 equally divided between the claimant and the
26 Elder Victims Trust Fund according to certain
27 conditions; requiring the Department of Revenue
28 to collect punitive damages payable to the
29 Elder Victims Trust Fund; creating s. 410.705,
30 F.S.; requiring the Department of Elderly
31 Affairs to develop and implement educational

1 initiatives concerning the exploitation of
2 elderly persons; prohibiting a party from
3 recovering punitive damages under the act in
4 addition to punitive damages under ch. 772,
5 F.S.; providing that lack of knowledge of an
6 elderly person's age is not a defense;
7 providing that a waiver of rights or remedies
8 by an elderly person under this act is
9 unenforceable and void; creating s. 825.1035,
10 F.S.; defining the term "financial exploitation
11 of a person over the age of 60"; providing for
12 criminal penalties for such offense; providing
13 an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. This act may be cited as the "Financial
18 Protection for the Elderly Act."

19 Section 2. Section 410.701, Florida Statutes, is
20 created to read:

21 410.701 Legislative intent.--The Legislature
22 recognizes that elderly persons are frequent victims of
23 deceptive and unfair acts and business practices and are often
24 unusually vulnerable to such conduct. The provisions of ss.
25 410.701-410.705 shall be construed liberally to promote the
26 protection of elderly persons and to provide elderly persons
27 individually and collectively the rights and means to recover
28 from those who engage in financial exploitation.

29 Section 3. Section 410.702, Florida Statutes, is
30 created to read:

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1 410.702 Definitions.--As used in ss. 410.701-410.705,
2 the term:

3 (1) "Deception" includes:

4 (a) A false or misleading misrepresentation of
5 material fact or circumstance; or

6 (b) An omission of a material fact which fact is
7 reasonably necessary in order to make the representations
8 made, in light of the circumstances under which they were
9 made, not misleading.

10 (2) "Department" means the Department of Elderly
11 Affairs.

12 (3) "Elderly person" means a person in this state who
13 is older than 60 years of age.

14 (4) "Financial institution" includes a bank, bank
15 holding company, credit card bank, banking organization,
16 savings association, trust company, credit union, investment
17 company, insurance company, or money-market mutual fund.

18 (5) "Financial exploitation" means to obtain or use,
19 or endeavor to obtain or use, an elderly person's moneys,
20 funds, assets, or property, by deception or intimidation, or
21 by unfair or unconscionable acts or practices. The term
22 includes any act causing, bringing about, participating in,
23 facilitating, counseling, or aiding or abetting financial
24 exploitation of an elderly person.

25 (6) "Intimidation" means communication by word or act
26 to an elderly person that he or she will be deprived of food,
27 nutrition, clothing, shelter, medicine, medical services,
28 money, or financial support or will suffer physical violence.

29 (7) "Obtains or uses" means any manner of:

30 (a) Taking or exercising control over moneys,
31 property, funds, or assets; or

1 (b) Making any use, disposition, or transfer of
2 moneys, property, funds, or assets.

3 (8) "Unconscionable" shall be determined by the court.
4 In determining whether an act or practice is unconscionable,
5 the court shall consider all relevant circumstances,
6 including, but not limited to whether:

7 (a) The defendant took advantage of the inability of
8 the elderly person to protect his or her own interests because
9 of the elderly person's physical or mental infirmity,
10 ignorance, illiteracy, inability to understand the language of
11 an agreement, or similar factor;

12 (b) The elderly person was unable to receive a
13 material benefit from the subject of the transaction;

14 (c) At the time of the transaction, the defendant knew
15 or should have known there was no reasonable probability of
16 payment of the attendant financial obligation by the elderly
17 person, when due;

18 (d) The defendant induced the elderly person to enter
19 into a transaction that the defendant knew or should have
20 known was excessively one-sided in favor of the defendant, to
21 the elderly person's detriment;

22 (e) The act or practice of the defendant shocks the
23 conscience or offends public policy; or

24 (f) The defendant seeks a waiver of the rights and
25 remedies provided in this section.

26 Section 4. Section 410.703, Florida Statutes, is
27 created to read:

28 410.703 Financial exploitation; civil actions.--

29 (1) Financial exploitation of an elderly person by a
30 financial institution is declared unlawful and against the
31 public policy of this state.

1 (2) Without regard to any other remedy or relief to
2 which an elderly person may or may not be entitled, an elderly
3 person aggrieved by a violation of this section may bring an
4 action in circuit court to obtain a declaratory judgment that
5 an act or practice violates this section or to enjoin a person
6 who has violated, is violating, or is otherwise likely to
7 violate this section.

8 (3) If an elderly person suffers injury or loss as a
9 result of a violation of this section, he or she may bring an
10 action for damages, including, but not limited to, punitive
11 damages, if appropriate, in any court of competent
12 jurisdiction.

13 (4) A plaintiff who prevails in any action brought
14 under this section is entitled to recover reasonable
15 attorney's fees and costs.

16 (5) The death of an elderly person does not cause the
17 court to lose jurisdiction of any claim for relief under this
18 section. Any action brought under this section may be brought
19 in any court of competent jurisdiction by the elderly person,
20 or the elderly person's guardian or family member, by a person
21 or organization acting on behalf of the elderly person with
22 the consent of the elderly person or his or her guardian or
23 family member, or by the personal representative, executor, or
24 trustee of the estate of a deceased elderly person.

25 (6) In an action under this section in which an
26 elderly person is a party, the elderly person may move the
27 court to advance the trial on the docket. The presiding judge,
28 after consideration of the age and health of the party, may
29 advance the trial on the docket. The motion may be filed and
30 served with the civil complaint or at any time thereafter.

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1 (7) Notwithstanding any other provision of law, the
2 Attorney General may:

3 (a) Conduct an investigation, administer oaths, and
4 subpoena witnesses if the Attorney General has reason to
5 believe that a person has engaged in, or is engaging in,
6 financial exploitation of an elderly person.

7 (b) Bring a civil action in circuit court:

8 1. To obtain a declaratory judgment that an act or
9 practice violates this section or to enjoin a person who has
10 violated, is violating, or is otherwise likely to violate this
11 section; or

12 2. For actual damages or restitution on behalf of an
13 elderly person who has suffered a loss as a result of a
14 violation of this section.

15 (8) In the case of any successful action brought by
16 the Attorney General under this section, the costs of the
17 action, together with reasonable attorney's fees shall be
18 awarded to the Attorney General. Any moneys received by the
19 Attorney General for attorney's fees and costs of
20 investigation or litigation in enforcement under this section
21 shall be deposited in the Elder Victims Trust Fund.

22 Section 5. Section 410.704, Florida Statutes, is
23 created to read:

24 410.704 Exploitation of an elderly person; punitive
25 damages; limitation.--

26 (1) An award of punitive damages under this section
27 may not exceed \$1 million.

28 (2) Notwithstanding subsection (1), this section does
29 not prohibit an appropriate court from exercising its
30 discretion in determining the adequacy of an award of punitive
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1 damages which is less than three times the amount of
2 compensatory damages.

3 (3) The jury may not be instructed or informed as to
4 the provisions of this section.

5 (4) Notwithstanding any law to the contrary, the
6 amount of punitive damages awarded under this section shall be
7 equally divided between the claimant and the Elder Victims
8 Trust Fund, as follows:

9 (a) After trial or summary judgment, the clerk of the
10 court shall transmit a copy of any verdict and final judgment
11 providing for punitive damages under this section to the Chief
12 Financial Officer by certified mail. In the final judgment,
13 the court shall order the percentages of the punitive damages
14 award, payable in equal divisions between the claimant and the
15 Elder Victims Trust Fund as provided in this section.

16 (b) If a settlement agreement is entered into between
17 the parties to the action after a jury verdict awarding
18 punitive damages in an action brought under this section has
19 been returned, the parties must provide for an equal share of
20 the punitive damages payable to the Elder Victims Trust Fund
21 and the claimant.

22 (c) The Department of Revenue shall collect or cause
23 to be collected all punitive damages payable to the Elder
24 Victims Trust Fund. Such punitive damages shall be deposited
25 in the Elder Victims Trust Fund in accordance with this
26 section.

27 (d) If the full amount of punitive damages awarded
28 cannot be collected, the claimant and the other recipients
29 designated under this section are each entitled to equal
30 shares of the punitive damages collected.

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1 Section 6. Section 410.705, Florida Statutes, is
2 created to read:

3 410.705 Exploitation of elderly persons; educational
4 initiatives; non-waiver; cumulative remedies.--

5 (1) The department shall develop and implement
6 statewide educational initiatives to inform elderly persons,
7 law enforcement agencies, members of the judicial system,
8 social services, professionals, and the public of the
9 prevalence of, and methods for preventing, deceptive and
10 unfair acts or practices that victimize elderly persons and
11 inform these groups of the provisions of this chapter, chapter
12 415, s. 775.0844, s. 772.11, s. 812.0145, and of the rights
13 and remedies available to elderly persons.

14 (2) The rights and remedies provided in ss.
15 410.701-410.705 are in addition to and cumulative with other
16 legal and administrative remedies available to an elderly
17 person, except that a party may not recover punitive damages
18 under this section in addition to punitive damages under s.
19 772.11.

20 (3) Lack of knowledge of the elderly person's age does
21 not constitute a defense to a cause of action brought under
22 ss. 410.701-410.705.

23 (4) Proof of individual or actual reliance is not
24 required in order to state a cause of action brought under ss.
25 410.701-410.705.

26 (5) Any waiver by an elderly person of the rights or
27 provisions of ss. 410.701-410.705 or any relief or remedies
28 provided to any elderly person under ss. 410.701-410.705 is
29 unenforceable and void.

30 Section 7. Section 825.1035, Florida Statutes, is
31 created to read:

1 825.1035 Financial exploitation of persons over the
2 age of 60.--

3 (1) "Financial exploitation of a person over the age
4 of 60" means knowingly, by deception or intimidation,
5 obtaining or using, or endeavoring to obtain or use, funds,
6 assets, or property of a person who is over the age of 60 with
7 the intent to temporarily or permanently deprive that person
8 of the use, benefit, or possession of the funds, assets, or
9 property, or to benefit someone other than the person over the
10 age of 60, by an individual who has a business relationship
11 with the person.

12 (2)(a) If the funds, assets, or property involved in
13 the exploitation of the person over the age of 60 is valued at
14 \$100,000 or more, the offender commits a felony of the second
15 degree, punishable as provided in s. 775.082, s. 775.083, or
16 s. 775.084.

17 (b) If the funds, assets, or property involved in the
18 exploitation of the person over the age of 60 is valued at
19 \$20,000 or more, but less than \$100,000, the offender commits
20 a felony of the third degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

22 (c) If the funds, assets, or property involved in the
23 exploitation of a person over the age of 60 is valued at less
24 than \$20,000, the offender commits a misdemeanor of the first
25 degree, punishable as provided in s. 775.082 or by a fine of
26 not more than \$5,000 or both.

27 Section 8. This act shall take effect upon becoming a
28 law.

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SENATE SUMMARY

Creates the "Financial Protection for the Elderly Act."
Provides that the financial exploitation of an elderly
person is unlawful. Provides for declaratory relief and
attorney's fees and costs. Provides that certain persons
may bring an action on an elderly person's behalf.
Provides for the Attorney General to conduct an
investigation and bring a civil suit in circuit court.
Provides that punitive damages may not exceed \$1 million.
Provides an exception. Provides for the amount for
punitive damages to be equally divided between the
claimant and the Elder Victims Trust Fund. Requires the
Department of Revenue to collect punitive damages payable
to the Elder Victims Trust Fund. Requires the Department
of Elderly Affairs to develop and implement educational
initiatives regarding the exploitation of elderly
persons. Provides that lack of knowledge of an elderly
person's age is not a defense. Provides that a waiver of
rights or remedies by an elderly person under the act is
unenforceable and void. Provides criminal penalties for
the financial exploitation of a person over the age of
60. (See bill for details.)