

By the Committee on Judiciary; and Senators Villalobos and Smith

308-2275-04

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; providing an effective
10 date.

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

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

16 Section 2. Section 410.701, Florida Statutes, is
17 created to read:

18 410.701 Legislative intent.--The Legislature
19 recognizes that elderly persons are frequent victims of
20 deceptive and unfair acts and business practices and are often
21 unusually vulnerable to such conduct. The provisions of ss.
22 410.701-410.705 shall be construed liberally to promote the
23 protection of elderly persons and to provide elderly persons
24 individually and collectively the rights and means to recover
25 from those who engage in financial exploitation.

26 Section 3. Section 410.702, Florida Statutes, is
27 created to read:

28 410.702 Definitions.--As used in ss. 410.701-410.705,
29 the term:

30 (1) "Deception" includes:
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1 (a) A false or misleading misrepresentation of
2 material fact or circumstance; or

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

7 (2) "Department" means the Department of Elderly
8 Affairs.

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

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

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

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

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

27 (a) Taking or exercising control over moneys,
28 property, funds, or assets; or

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

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

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

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

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

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

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

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

24 Section 4. Section 410.703, Florida Statutes, is
25 created to read:

26 410.703 Financial exploitation; civil actions.--

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

30 (2) Without regard to any other remedy or relief to
31 which an elderly person may or may not be entitled, an elderly

1 person aggrieved by a violation of this section may bring an
2 action in circuit court to obtain a declaratory judgment that
3 an act or practice violates this section or to enjoin a person
4 who has violated, is violating, or is otherwise likely to
5 violate this section.

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

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

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

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

29 (7) Notwithstanding any other provision of law, the
30 Attorney General may:

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

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

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

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

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

20 Section 5. Section 410.704, Florida Statutes, is
21 created to read:

22 410.704 Exploitation of an elderly person; punitive
23 damages; limitation.--

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

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

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

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

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

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

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

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

29 Section 6. Section 410.705, Florida Statutes, is
30 created to read:

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1 410.705 Exploitation of elderly persons; educational
2 initiatives; non-waiver; cumulative remedies.--

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

12 (2) The rights and remedies provided in ss.
13 410.701-410.705 are in addition to and cumulative with other
14 legal and administrative remedies available to an elderly
15 person, except that a party may not recover punitive damages
16 under this section in addition to punitive damages under s.
17 772.11.

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

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

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

28 Section 7. This act shall take effect upon becoming a
29 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2092

- Removes new language that provided specific penalties for the crime of financial exploitation of a person over the age of sixty, and based the severity of the criminal penalty on the value of the funds, assets or property.