

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1223 Deceptive and Unfair Trade Practices
SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Grant and Spano
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 716

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|----------|--|
| 1) Civil Justice Subcommittee | 12 Y, 0 N, As CS | Williams | Bond |
| 2) Veteran & Military Affairs Subcommittee | 12 Y, 0 N | Thompson | De La Paz |
| 3) Judiciary Committee | 16 Y, 0 N, As CS | Williams | Havlicak |

SUMMARY ANALYSIS

The Florida Deceptive and Unfair Trade Practices Act (Act) provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. The Act includes explicit protection to senior citizens and disabled persons against deceptive or unfair treatment. Current law provides that any person who willfully uses, or has willfully used a method, act, or practice to victimize or attempt to victimize a senior citizen or disabled person may be liable for a civil penalty of up to \$15,000.

The bill provides military servicemembers and their families with similar heightened protections that senior citizens and disabled persons have against deceptive or unfair trade practices. The bill also provides that an order of restitution or reimbursement based on a violation against a military servicemember or the military servicemember's spouse or child, has priority over the imposition of civil penalties. The bill defines "military servicemember" as a person who is on active duty in, or a veteran of, the United States Armed Forces.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Financial Exploitation of the Elderly and Persons with Disabilities

It is estimated that over 70% of the nation's wealth is controlled by persons over the age of fifty.¹ This may serve as evidence to why senior citizens are attractive targets of deceptive or unfair trade acts or practices.² A recent study published by MetLife Mature Market Institute estimates that the financial loss by victims of elder financial crimes and exploitation exceeds \$2.9 billion annually.³

Many elderly persons are likely to have disabilities that make them dependent on others for help. Those with cognitive impairments, mental health conditions, or physical disabilities may be dependent upon others in making financial decisions or carrying out daily transactions.⁴ Financial exploitation against an elderly or disabled person can involve the illegal or improper use of their funds, property or assets, as well as fraud or identity theft.⁵

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (Act) declares that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.⁶ Current law provides that a person who willfully uses, or has willfully used, a method, act, or practice that is unlawful under the Act is liable for a civil penalty of not more than \$10,000 for each violation.⁷ The law includes explicit protection for senior citizens and disabled persons by providing that any person who willfully uses, or has willfully used, a method, act, or practice to victimize or attempt to victimize a senior citizen or disabled person is liable for a civil penalty of not more than \$15,000 for each violation.⁸ Such act becomes a violation when a perpetrator knows or should have known that his or her conduct was unfair or deceptive.⁹ The law further provides that restitution or reimbursement to the senior citizen or disabled person has priority over the imposition of civil penalties.¹⁰ Civil penalties collected pursuant to this law are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.¹¹

Financial Exploitation of Military Servicemembers

Increasingly, military servicemembers and their families are becoming the victims of predatory behavior much like senior citizens and disabled persons. In 2006, Congress enacted the Military Personnel Financial Services Protection Act (Protection Act) to protect military servicemembers from unscrupulous practices regarding financial and investment products.¹² In the Protection Act, Congress found that military servicemembers were being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices.¹³

The Protection Act provides no restitution for the victims or civil penalties for perpetrators, but aims to regulate the marketing and sale of securities and life insurance products on military bases. Among other things, the Protection Act:

¹ National Committee for the Prevention of Elder Abuse. *Financial Abuse*. (http://www.preventelderabuse.org/elderabuse/fin_abuse.html)(last visited March 14, 2013).

² *Id.*

³ NCSL, *Financial Crimes Against the Elderly 2012 Legislation*. January 15, 2013 (<http://www.ncsl.org/issues-research/banking/financial-crimes-against-the-elderly-2012-legis.aspx>)(last visited March 14, 2013).

⁴ *Id.*

⁵ *Id.*

⁶ Section 501.204(1), F.S.

⁷ Section 501.2075, F.S.,

⁸ Section 501.2077(2), F.S.

⁹ *Id.*

¹⁰ Section 501.2077(3), F.S.

¹¹ Section 501.2077(4), F.S.

¹² Public Law No: 109-290

¹³ *Id.*

- Bans the sale of securities products called periodic payment plans;
- Requires insurers and producers of life insurance products to make certain disclosures when selling or soliciting securities or life insurance products on military bases;
- Requires insurance companies to inform military personnel about subsidized life insurance offered by the federal government when marketing and selling insurance policies to them; and
- Requires the Department of Defense to maintain a list of brokers and agents barred from doing business on military bases or who have engaged in prohibited acts.¹⁴

The Federal Trade Commission (FTC) has also taken steps to protect military servicemembers from deceptive trade acts or practices. In doing so, the FTC expanded its Consumer Sentinel online database¹⁵ to exclusively provide the military community a unique forum to submit consumer complaints to the FTC which are then made available to law enforcement. The complaints cover topics like identity theft, deceptive lending or mortgage practices, debt collection, phone fraud, or other scams. The FTC does not resolve individual disputes, but servicemembers' complaints help the FTC and its partners target cases for prosecution, shut down scammers, spot patterns of fraud before they become widespread, and alert the military community to scams.¹⁶

The Use of the Term “Handicapped Person”

As society has continued to evolve and become more inclusive of individuals with physical and cognitive disabilities, the description of these conditions has also evolved. “Disability is a general term used for a functional limitation that interferes with a person's ability, for example, to walk, lift, heal, or learn. It may refer to a physical, sensory, or mental condition. Handicap can be used when citing laws and situations, but should never be used to describe a person or disability.”¹⁷ There are examples throughout Florida Statutes of the use of both of the terms “handicapped person” and “person who has a disability.”¹⁸ Generally, both terms have been used interchangeably. When possible, “handicap” should be avoided in describing a disability.¹⁹ This is consistent with the terminology used in the most recent update to the Americans with Disabilities Act (ADA). The ADA uses the term “disability,” as opposed to the term “handicap.”²⁰

Effect of the Bill

The bill provides that a person who willfully uses, or has willfully used, a method, act, or practice directed at a military servicemember, or the spouse or child of a military servicemember, is liable for a civil penalty of not more than \$15,000 for each violation. The bill provides that an order of restitution or reimbursement based on a violation against a military servicemember, or the spouse or child of a military servicemember has priority over the imposition of civil penalties.

The bill defines “military servicemember” as a person who is on active duty in, or a veteran of, the United States Armed Forces. The bill also defines the terms “active duty” and “veteran.”²¹ The bill replaces the term “handicapped person” in s. 501.2077, F.S., with “a person who has a disability.”

¹⁴ *Id.*

¹⁵ The FTC Consumer Sentinel is a unique investigative cyber tool that provides law enforcement access to millions of consumer complaints. See, <http://www.ftc.gov/sentinel/> (last visited April 1, 2013) for more information on the FTC Consumer Sentinel.

¹⁶ FTC Consumer Military Sentinel. (<http://www.ftc.gov/sentinel/military/index.shtml>)(last visited March 14, 2013).

¹⁷ University of Kansas Research and Training Center on Independent Living, *Guidelines for Reporting and Writing about People with Disabilities*, p. 4, (<http://www.rtcil.org/products/RTCIL%20publications/Media/Guidelines%20for%20Reporting%20and%20Writing%20about%20People%20with%20Disabilities.pdf>)(last visited March 14, 2013).

¹⁸ Sections 193.623, 196.101, 286.26, and 320.0848, F.S.

¹⁹ 2005 Associated Press Stylebook and Briefing on Media Law. p. 74,

(http://www.quarterboundpress.com/qbp/frequently_asked_questions_files/AP%20StyleGuide%202005.pdf)(last visited March 14, 2013).

²⁰ 42 U.S.C., Chapter 126

²¹The bill provides that the term “active duty” has the same meaning as in s. 250.01, F.S., and the term “veteran” has the same meaning as in s. 1.01, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 501.2077, F.S., relating to violations involving senior citizen or handicapped person; civil penalties; presumption.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changes references to “handicapped person” in s. 501.2077, F.S., to a “person who has a disability” and removes “physical” disability from its definition.
- Makes technical changes to conform bill language to the Senate companion bill.

On April 3, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Tracks existing language and adds the elements of “knew or should have known” and “willfully using, or has willfully used” to offenses of deceptive and unfair practices against a military servicemember and their spouse or child.
- Adds a military servicemember’s spouse or child to the provision prioritizing restitution over the imposition of civil penalties.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.