

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 716

INTRODUCER: Children, Families, and Elder Affairs Committee; Senator Simpson and others

SUBJECT: Deceptive and Unfair Trade Practices

DATE: April 12, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Spaulding | Ryon | MS | Favorable |
| 2. | Peterson | Hendon | CF | Fav/CS |
| 3. | Shankle | Cibula | JU | Pre-meeting |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 716 provides military service members and their families the same protections senior citizens and persons with a disability have against deceptive or unfair trade practices. The bill provides that a person who willfully uses a method, act, or practice to victimize or attempt to victimize a military service member or the spouse or child of a military service member is liable for a civil penalty of not more than \$15,000 for each violation.

This bill also replaces the term “handicapped person” in section 501.2077 Florida Statutes, with the currently accepted term “person who has a disability.”

This bill substantially amends section 501.2077, Florida Statutes.

II. Present Situation:

Financial Exploitation of the Elderly and Persons with Disabilities

Senior citizens and persons with disabilities are frequently targets of deceptive or unfair trade practices. Perpetrators often view these vulnerable populations as easy targets. Older individuals

may be targeted merely because they possess more assets (i.e., savings, annuities and retirement accounts, stocks and bonds, insurance policies, and property) than younger individuals. Those with cognitive impairments, mental health conditions, or physical disabilities may be dependent upon others (family members, friends, formal and informal caregivers, or court appointed representatives) for assistance in making financial decisions or carrying out daily transactions, and therefore may be vulnerable to theft, exploitation, or undue influence.¹

Florida law provides explicit protection to senior citizens and persons with disabilities against deceptive or unfair trade acts or practices. Section 501.2077, F.S., provides that any person who willfully uses, a method, act, or practice to victimize or attempt to victimize a senior citizen or person with a disability is liable for a civil penalty of not more than \$15,000 for each violation. It is a violation when a perpetrator knew or should have known that his or her conduct was unfair or deceptive.² The law further provides that restitution or reimbursement to the senior citizen or person with a disability has priority over the imposition of civil penalties.³ Civil penalties collected pursuant to this law are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.⁴

Financial Exploitation of Military Service Members

Increasingly, military service members and their families are becoming the victims of predatory behavior much like senior citizens and persons with disabilities. In 2006, Congress enacted the Military Personnel Financial Services Protection Act (Act) to protect military service members from unscrupulous practices regarding financial and investment products.⁵ In the Act, Congress found that “military service members [were] being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices.”⁶

The 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 Act:

- 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.⁷

¹ Lisa Nerenberg, *Forgotten Victims of Elder Financial Crime and Abuse: A Report and Recommendations*, The National Center on Elder Abuse, <http://www.ncea.aoa.gov/Resources/Publication/docs/fvefca.pdf> (last visited April 9, 2013).

² Section 501.2077(2), F.S.

³ Section 501.2077(3), F.S.

⁴ Section 501.2077(4), F.S.

⁵ Public Law No. 109-290, S. 418, 109th Cong (Sept. 29, 2006).

⁶ *Id.*

⁷ *Id.*

The Federal Trade Commission (FTC) has also taken steps to protect military service members from deceptive trade acts or practices. The FTC expanded its Consumer Sentinel online database⁸ to provide the military community a unique and exclusive forum to submit consumer complaints to the FTC, which are then made available to law enforcement agencies.⁹ 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 service members' 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.¹⁰

The Use of the Terms “Handicapped Person” and “Person Who Has a Disability”

As society has continued to evolve and become more inclusive of individuals with physical and cognitive disabilities, the nomenclature used to describe 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.¹¹ According to the Associated Press *Stylebook and Briefing on Media Law*, “handicap” should be avoided in describing a disability.¹² The Americans with Disabilities Act uses the term “disability,” as opposed to the term “handicap.”¹³ Both of the terms – “handicapped person” and “person who has a disability” – are used throughout the Florida Statutes.¹⁴ Generally, both terms have been used interchangeably.

III. Effect of Proposed Changes:

The bill amends s. 501.2077, F.S., to provide military service members the same protections senior citizens and persons with a disability have against deceptive or unfair trade practices. The bill provides that a person who willfully uses a method, act, or practice to victimize or attempt to victimize a military service member or the spouse or child of a military service member is liable for a civil penalty of not more than \$15,000 for each violation. An order of restitution or reimbursement based on a violation against a military service member has priority over the imposition of civil penalties. The bill defines “military service member” as a person who is on active duty in or a veteran of the U.S. Armed Forces.

⁸ Fed. Trade Commission, *Consumer Sentinel*, <http://www.ftc.gov/sentinel/> (last visited April 9, 2013). The FTC Consumer Sentinel is a unique investigative cyber tool that provides law enforcement access to millions of consumer complaints.

⁹ Fed. Trade Commission, *Consumer Military Sentinel*, <http://www.ftc.gov/sentinel/military/index.shtml> (last visited April 9, 2013).

¹⁰ *Id.*

¹¹ Univ. 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 April 9, 2013).

¹² 2005 Associated Press, *Stylebook and Briefing on Media Law*, p. 74, (2005) available at http://www.quarterboundpress.com/qbp/frequently_asked_questions_files/AP%20StyleGuide%202005.pdf.

¹³ 42 U.S.C. s. 12102.

¹⁴ See Sections 193.623, 196.101, 286.26, and 320.0848, F.S.

The bill also replaces the term “handicapped person” in s. 501.2077, F.S., with the currently accepted term “person who has a disability.”

This bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 18, 2013:

The bill not only changed the term “handicapped person” to “person who has a disability,” but it also expanded the definition to include a person with a physical disability. Currently, the term (and the scope of the deceptive or unfair trade protection in

the law) includes a person who has a mental or educational impairment. The CS restored the original definition by removing the reference to physical impairment.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
