

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 Military Affairs, Space, and Domestic Security

BILL: SB 716
 INTRODUCER: Senator Simpson and others
 SUBJECT: Deceptive and Unfair Trade Practices
 DATE: March 5, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon	MS	Pre-meeting
2.	_____	_____	CF	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 716 provides military service members and their families the same protections senior citizens and handicapped persons have against deceptive or unfair trade acts. 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.

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

The bill substantially amends section 501.2077 of the 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 acts or practices, as perpetrators 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 their younger cohorts. 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 Statutes provides explicit protection to senior citizens and handicapped persons against deceptive or unfair trade acts or practices. Section 501.2077, F.S., 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 handicapped person 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. The law further provides that restitution or reimbursement to the senior citizen or handicapped person has priority over the imposition of civil penalties. Civil penalties collected pursuant to this law are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.

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.² 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.³

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.

The Federal Trade Commission (FTC) has also taken steps to protect military service members from deceptive trade acts or practices. In doing so, the FTC expanded its Consumer Sentinel online database⁴ 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

¹ Information from this paragraph obtained from the National Center on Elder Abuse. Financial Exploitation of the Elderly: An Update of the Literature, Available at:

http://www.ncea.aoa.gov/main_site/library/cane/CANE_Series/CANE_FinancialExploitation.aspx.

² Public Law No: 109-290

³ Id.

⁴ 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/> for more information on the FTC Consumer Sentinel.

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.⁵

The Use of the Term “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 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.”⁶ There are examples throughout Florida Statutes of the uses of both of the terms “handicapped person” and “person who has a disability.”⁷ Generally both terms have been used interchangeably. When possible, “handicap” should be avoided in describing a disability.⁸ This is consistent with the terminology used in the most recent update to Americans with Disabilities Act (ADA). The ADA uses the term “disability,” as opposed to the term “handicap.”⁹

III. Effect of Proposed Changes:

The bill amends s. 501.2077, F.S., to provide military service members the same protections senior citizens and handicapped persons have against deceptive or unfair trade acts. 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.

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 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ FTC Consumer Military Sentinel. Available at: <http://www.ftc.gov/sentinel/military/index.shtml>.

⁶ University of Kansas Research and Training Center on Independent Living, Guidelines for Reporting and Writing about People with Disabilities, p. 4, Available at: <http://www.rtcil.org/products/RTCIL%20publications/Media/Guidelines%20for%20Reporting%20and%20Writing%20about%20People%20with%20Disabilities.pdf>.

⁷ s. 193.623, s. 196.101, s. 286.26, s. 320.0848 F.S.

⁸ 2005 Associated Press Stylebook and Briefing on Media Law. p. 74, Available at:

http://www.quarterboundpress.com/qbp/frequently_asked_questions_files/AP%20StyleGuide%202005.pdf.

⁹ 42 U.S.C., Chapter 126.

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.)

None.

B. Amendments:

None.