

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2057 Session of
2014

INTRODUCED BY WHITE, BISHOP, MILLARD, KINSEY, SWANGER,
HENNESSEY, O'BRIEN, MAHONEY, GOODMAN, GINGRICH, MURT, THOMAS
AND COHEN, FEBRUARY 26, 2014

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
FEBRUARY 26, 2014

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; and
7 making repeals," providing for immunity for financial
8 advisors, for private right of action and for a financial
9 crimes surcharge; establishing the Older Adult Financial
10 Exploitation Trust Fund; and conferring powers and imposing
11 duties on the Department of Aging.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of November 6, 1987 (P.L.381, No.79),
15 known as the Older Adults Protective Services Act, is amended by
16 adding a chapter to read:

17 CHAPTER 9

18 FINANCIAL EXPLOITATION

19 Section 901. Definitions.

20 Section 902. Immunity for financial advisors.

21 Section 903. Private right of action.

1 Section 904. Financial crimes surcharge.

2 Section 905. Older Adult Financial Exploitation Trust Fund.

3 Section 901. Definitions.

4 The following words and phrases when used in this chapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Financial crimes." Any of the offenses under the following
8 provisions of 18 Pa.C.S. (relating to crimes and offenses):

9 (1) Section 3921 (relating to theft by unlawful taking
10 or disposition).

11 (2) Section 3922 (relating to theft by deception).

12 (3) Section 3923 (relating to theft by extortion).

13 (4) Section 3924 (relating to theft of property lost,
14 mislaid, or delivered by mistake).

15 (5) Section 3925 (relating to receiving stolen
16 property).

17 (6) Section 3926 (relating to theft of services).

18 (7) Section 3927 (relating to theft by failure to make
19 required disposition of funds received).

20 (8) Section 3928 (relating to unauthorized use of
21 automobiles and other vehicles).

22 (9) Section 3934 (relating to theft from a motor
23 vehicle).

24 (10) Section 4101 (relating to forgery).

25 (11) Section 4105 (relating to bad checks).

26 (12) Section 4106 (relating to access device fraud).

27 (13) Section 4107 (relating to deceptive or fraudulent
28 business practices).

29 (14) Section 4117 (relating to insurance fraud).

30 (15) Section 4120 (relating to identity theft).

1 "Fund." The Older Adult Financial Exploitation Trust Fund
2 established under section 905.

3 Section 902. Immunity for financial advisors.

4 (a) General rule.--A financial advisor who has reasonable
5 cause to believe an older adult is being financially exploited
6 may report to a law enforcement agency or government agency
7 information pertaining to any of the following:

8 (1) The possible financial exploitation.

9 (2) Fiduciary abuse.

10 (3) Fraud.

11 (b) Immunity.--A financial advisor making a report under
12 subsection (a) in good faith shall not be civilly or criminally
13 liable for the financial advisor's action in making the report.
14 Section 903. Private right of action.

15 (a) General rule.--Any older adult who is injured by an act
16 of financial exploitation or any person authorized to act on
17 behalf of the older adult may institute an action, in the court
18 of common pleas, or any other court of competent jurisdiction,
19 for damages sustained by the older adult.

20 (b) Award.--The following shall apply:

21 (1) If it is proven by a preponderance of the evidence
22 that a person has engaged in financial exploitation, the
23 court shall award reasonable attorney fees and costs to the
24 older adult, in addition to compensatory damages and all
25 other remedies otherwise provided by law.

26 (2) In addition to the relief provided under paragraph
27 (1), if it is proven by clear and convincing evidence that
28 the financial exploitation was done willfully, wantonly or
29 maliciously or was characterized by aggravating
30 circumstances, the court may also award punitive damages to

1 the older adult.

2 (c) Nonexclusivity.--The remedies provided in this section
3 shall not be considered exclusive and shall not preclude any
4 other criminal, civil or administrative remedy.

5 Section 904. Financial crimes surcharge.

6 In addition to sentencing a person who has committed a
7 financial crime against an older adult, the court of competent
8 jurisdiction shall assess a surcharge of \$100 against the
9 person. The surcharge shall be collected and transferred to the
10 Department of Revenue for deposit into the fund established
11 under section 905.

12 Section 905. Older Adult Financial Exploitation Trust Fund.

13 (a) Establishment.--The Older Adult Financial Exploitation
14 Trust Fund is established as a separate fund in the State
15 Treasury.

16 (b) Sources.--The following are the sources of the fund:

17 (1) Surcharges collected under section 904.

18 (2) Return on the money in the fund.

19 (c) Purpose.--The department shall use moneys in the fund
20 for the purpose of assisting older adults who are the victims of
21 financial exploitation to recover their income.

22 (d) Regulations.--The department shall promulgate
23 regulations to administer this section.

24 Section 2. This act shall take effect in 60 days.