THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 398 Session of 2019

INTRODUCED BY MASSER, SCHLEGEL CULVER, DAY, KLUNK, STEPHENS,
MURT, HAHN, GLEIM, RYAN, KAUFFMAN, DAVIDSON, MILLARD,
PICKETT, DeLUCA, BERNSTINE, NEILSON, IRVIN, BROWN AND GILLEN,
MAY 2, 2019

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
MAY 2, 2019

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 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   The following words and phrases when used in this chapter

21 shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

 (10) Section 4101 (relating to forgery).

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

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

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

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

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

"Financial exploitation." The wrongful or unauthorized taking or attempt to take by withholding, appropriating, concealing or using the money, assets or property of an older adult through:

 (1) the use of a power of attorney, guardianship or

custodial, representative or conservator relationship; or

    (2) a business transaction that involves deception,

intimidation, undue influence or conversion and that deprives

the older adult of the lawful ownership, use or benefit of

the money, assets or property.

"Fund." The Older Adult Financial Exploitation Trust Fund

established under section 905.

Section 902. Immunity for financial advisors.

    (a) General rule.--A financial advisor who has reasonable

cause to believe an older adult is being financially exploited

may report to a law enforcement agency or government agency

information pertaining to any of the following:

       (1) The possible financial exploitation.

       (2) Fiduciary abuse.

       (3) Fraud.

    (b) Immunity.--A financial advisor making a report under

subsection (a) in good faith shall not be civilly or criminally

liable for the financial advisor's action in making the report.

Section 903. Private right of action.

    (a) General rule.--Any older adult who is injured by an act

of financial exploitation or any person authorized to act on

behalf of the older adult may institute an action, in the court

of common pleas or any other court of competent jurisdiction,

for damages sustained by the older adult.

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

       (1) If it is proven by a preponderance of the evidence

that a person has engaged in financial exploitation, the

court shall award reasonable attorney fees and costs to the

older adult, in addition to compensatory damages and all

other remedies otherwise provided by law.

1   (2) In addition to the relief provided under paragraph

2 (1), if it is proven by clear and convincing evidence that

3 the financial exploitation was done willfully, wantonly or

4 maliciously or was characterized by aggravating

5 circumstances, the court may also award punitive damages to

6 the older adult.

7   (c) Nonexclusivity.--The remedies provided in this section

8 shall not be considered exclusive and shall not preclude any

9 other criminal, civil or administrative remedy.

10 Section 904. Financial crimes surcharge.

11   In addition to sentencing a person who has committed a

12 financial crime against an older adult, the court of competent

13 jurisdiction shall assess a surcharge of $100 against the

14 person. The surcharge shall be collected and transferred to the

15 Department of Revenue for deposit into the fund established

16 under section 905.

17 Section 905. Older Adult Financial Exploitation Trust Fund.

18   (a) Establishment.--The Older Adult Financial Exploitation

19 Trust Fund is established in the State Treasury.

20   (b) Contents.--The fund shall consist of:

21   (1) Surcharges collected under section 904.

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

23   (c) Purpose.--The fund shall be used to assist older adults

24 who are the victims of financial exploitation to recover their

25 income.

26   (d) Regulations.--The department shall promulgate

27 regulations to administer this section.

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