

LEGISLATIVE REFERENCE BUREAU

2014D08215KMK:JMM

L.R.B. Form No. 4 (Rev. 3/25/10)

No. _____

LEGISLATIVE REFERENCE BUREAU

AN ACT

Amending the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, providing for immunity for financial advisors, for private right of action and for a financial crimes surcharge; establishing the Older Adult Financial Exploitation Trust Fund; and conferring powers and imposing duties on the Department of Aging.

INTRODUCED _____ 20 _____

By _____ District NO. _____

By _____ District NO. _____

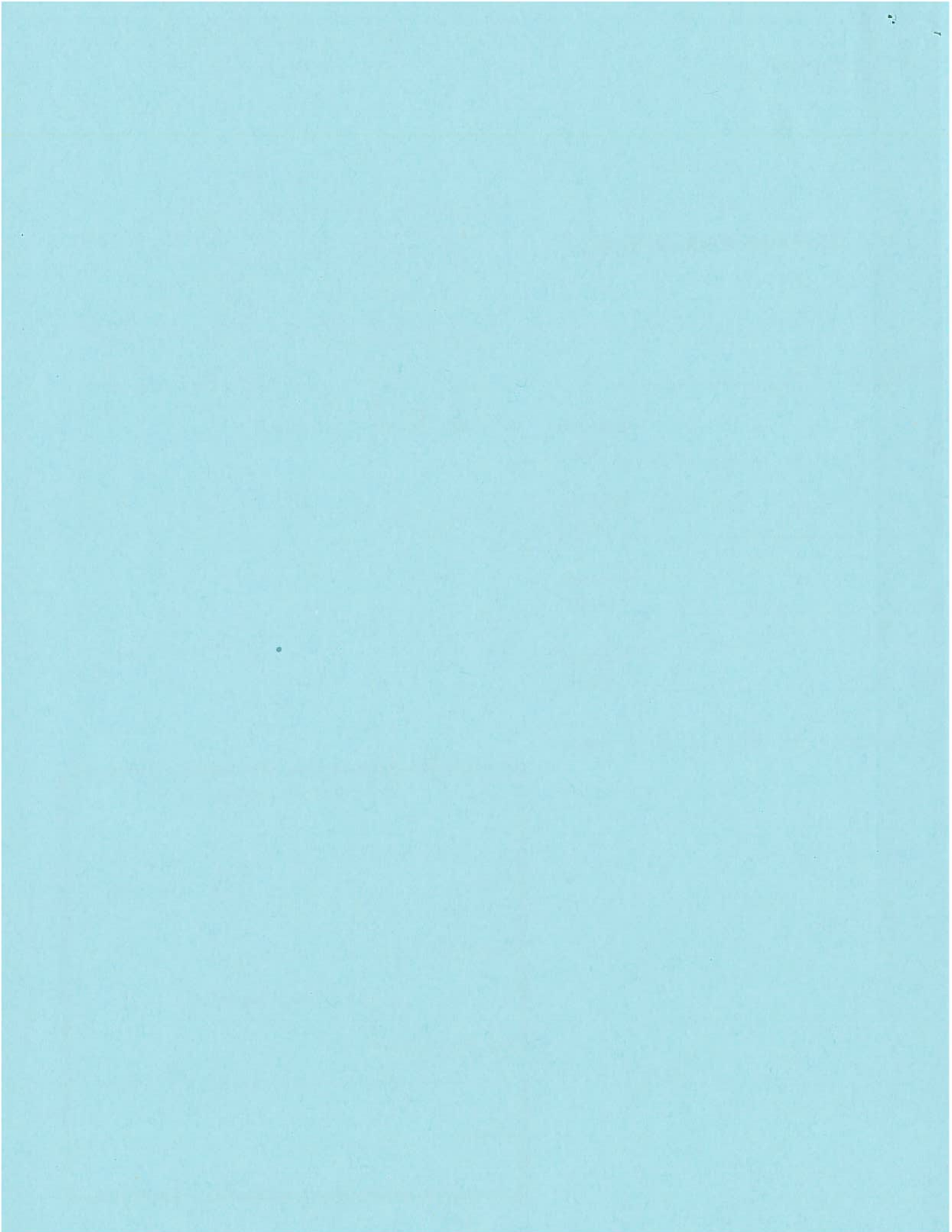
By _____ District NO. _____

By _____ District NO. _____

See next page for additional co-sponsors.

Referred to Committee on	
Date _____	20 _____
Reported _____	20 _____
As Committed-Amended	
Recommendation	

By Hon. _____	



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.

22 Section 904. Financial crimes surcharge.

1 Section 905. Older Adult Financial Exploitation Trust Fund.

2 Section 901. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 "Fund." The Older Adult Financial Exploitation Trust Fund

1 established under section 905.

2 Section 902. Immunity for financial advisors.

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

7 (1) The possible financial exploitation.

8 (2) Fiduciary abuse.

9 (3) Fraud.

10 (b) Immunity.--A financial advisor making a report under
11 subsection (a) in good faith shall not be civilly or criminally
12 liable for the financial advisor's action in making the report.

13 Section 903. Private right of action.

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

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

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

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

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

4 Section 904. Financial crimes surcharge.

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

11 Section 905. Older Adult Financial Exploitation Trust Fund.

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

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

16 (1) Surcharges collected under section 904.

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

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

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

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