

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 398**      Session of  
2019

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

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

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## 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

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (1) the use of a power of attorney, guardianship or  
2           custodial, representative or conservator relationship; or

3           (2) a business transaction that involves deception,  
4           intimidation, undue influence or conversion and that deprives  
5           the older adult of the lawful ownership, use or benefit of  
6           the money, assets or property.

7           "Fund." The Older Adult Financial Exploitation Trust Fund  
8           established under section 905.

9           Section 902. Immunity for financial advisors.

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

14               (1) The possible financial exploitation.

15               (2) Fiduciary abuse.

16               (3) Fraud.

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

20          Section 903. Private right of action.

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

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

27               (1) If it is proven by a preponderance of the evidence  
28               that a person has engaged in financial exploitation, the  
29               court shall award reasonable attorney fees and costs to the  
30               older adult, in addition to compensatory damages and all

1 other remedies otherwise provided by law.

2 (2) In addition to the relief provided under paragraph  
3 (1), if it is proven by clear and convincing evidence that  
4 the financial exploitation was done willfully, wantonly or  
5 maliciously or was characterized by aggravating  
6 circumstances, the court may also award punitive damages to  
7 the older adult.

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

11 Section 904. Financial crimes surcharge.

12 In addition to sentencing a person who has committed a  
13 financial crime against an older adult, the court of competent  
14 jurisdiction shall assess a surcharge of \$100 against the  
15 person. The surcharge shall be collected and transferred to the  
16 Department of Revenue for deposit into the fund established  
17 under section 905.

18 Section 905. Older Adult Financial Exploitation Trust Fund.

19 (a) Establishment.--The Older Adult Financial Exploitation  
20 Trust Fund is established in the State Treasury.

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

22 (1) Surcharges collected under section 904.

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

24 (c) Purpose.--The fund shall be used to assist older adults  
25 who are the victims of financial exploitation to recover their  
26 income.

27 (d) Regulations.--The department shall promulgate  
28 regulations to administer this section.

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