

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1430 Session of 2021

INTRODUCED BY DAY, MASSER, SCHLEGEL CULVER, KLUNK, PICKETT, RYAN, DAVANZO, HILL-EVANS, LEWIS DELROSSO, BROOKS, R. BROWN, THOMAS, MILLARD, HEFFLEY, FEE, NEILSON, T. DAVIS AND MOUL, MAY 17, 2021

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 7, 2021

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. PROVIDING FOR PRIVATE
12 RIGHT OF ACTION RELATING TO FINANCIAL EXPLOITATION AND FOR
13 FINANCIAL CRIMES SURCHARGE.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

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

CHAPTER 9

FINANCIAL EXPLOITATION

Section 901. Definitions.

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 ~~INCLUDING ANY ACT OR OMISSION TAKEN BY A PERSON, INCLUDING~~
21 ~~THROUGH THE USE OF A POWER OF ATTORNEY, GUARDIAN, CUSTODIAN,~~
22 ~~TRUSTEE, PERSONAL REPRESENTATIVE OR CONSERVATOR OF AN OLDER~~
23 ~~ADULT OR BY AN INDIVIDUAL WHO STANDS IN A POSITION OF TRUST AND~~
24 ~~CONFIDENCE WITH AN OLDER ADULT, INCLUDING BUSINESS TRANSACTIONS~~
25 ~~TO:~~

26 ~~(1) OBTAIN OR ATTEMPT TO OBTAIN CONTROL, THROUGH~~
27 ~~DECEPTION, INTIMIDATION OR UNDUE INFLUENCE, OVER THE OLDER~~
28 ~~ADULT'S MONEY, ASSETS OR PROPERTY TO DEPRIVE THE OLDER ADULT~~
29 ~~OF THE OWNERSHIP, USE, BENEFIT OR POSSESSION OF THE OLDER~~
30 ~~ADULT'S MONEY, ASSETS OR PROPERTY; OR~~

1 (2) CONVERT OR ATTEMPT TO CONVERT MONEY, ASSETS OR
2 PROPERTY OF THE OLDER ADULT TO DEPRIVE THE OLDER ADULT OF THE
3 OWNERSHIP, USE, BENEFIT OR POSSESSION OF THE OLDER ADULT'S
4 MONEY, ASSETS OR PROPERTY.

5 Section ~~903~~ 902. Private right of action. <--

6 (a) General rule.--Any older adult who is injured by an act
7 of financial exploitation ~~or~~ BY any person authorized to act IN <--
8 A FIDUCIARY CAPACITY on behalf of the older adult may institute
9 an action, in the court of common pleas or any other court of
10 competent jurisdiction, for damages sustained by the older
11 adult.

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

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

18 (2) In addition to the relief provided under paragraph
19 (1), if it is proven by clear and convincing evidence that
20 the financial exploitation was done willfully, wantonly or
21 maliciously or was characterized by aggravating
22 circumstances, the court may also award punitive damages to
23 the older adult.

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

27 Section ~~904~~ 903. Financial crimes surcharge. <--

28 In addition to sentencing a person who has committed a
29 financial crime against an older adult, the court of competent
30 jurisdiction shall assess a surcharge of \$100 against the

1 ~~person. The surcharge shall be collected and transferred to the~~ <--
2 ~~Department of Revenue for deposit into the fund established~~
3 ~~under section 905.~~

4 ~~Section 905. Older Adult Financial Exploitation Trust Fund.~~

5 ~~(a) Establishment. The Older Adult Financial Exploitation~~
6 ~~Trust Fund is established in the State Treasury.~~

7 ~~(b) Contents. The fund shall consist of:~~

8 ~~(1) Surcharges collected under section 904.~~

9 ~~(2) Return on the money in the fund.~~

10 ~~(c) Purpose. The fund shall be used to assist older adults~~
11 ~~who are the victims of financial exploitation to recover their~~
12 ~~income.~~

13 ~~(d) Regulations. The department shall promulgate~~
14 ~~regulations to administer this section. BY THE ADMINISTRATIVE~~ <--
15 ~~OFFICE OF PENNSYLVANIA COURTS FOR DEPOSIT INTO THE STATE LOTTERY~~
16 ~~FUND.~~

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