

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 1223	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Civil Justice Subcommittee; Grant; Spano and others	116 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 716)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 1223 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013. The bill provides a military servicemember and the military servicemember's spouse or dependent child with heightened protections against deceptive or unfair trade practices. The bill also provides that an order of restitution or reimbursement based on a violation against a military servicemember or the military servicemember's spouse or dependent child, has priority in collection over the imposition of civil penalties. The bill defines "military servicemember" as a person who is on active duty in, or a veteran of, the United States Armed Forces.

The bill provides that civil penalties collected pursuant to this law must be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.

The bill was approved by the Governor on June 14, 2013, ch. 2013-210, L.O.F., and will become effective on July 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Financial Exploitation of the Elderly and Persons with Disabilities**

It is estimated that over 70% of the nation's wealth is controlled by persons over the age of fifty.<sup>1</sup> This may serve as evidence to why senior citizens are attractive targets of deceptive or unfair trade acts or practices.<sup>2</sup> A recent study published by MetLife Mature Market Institute estimates that the financial loss by victims of elder financial crimes and exploitation exceeds \$2.9 billion annually.<sup>3</sup>

Many elderly persons are likely to have disabilities that make them dependent on others for help. Those with cognitive impairments, mental health conditions, or physical disabilities may be dependent upon others in making financial decisions or carrying out daily transactions.<sup>4</sup> Financial exploitation against an elderly or disabled person can involve the illegal or improper use of their funds, property or assets, as well as fraud or identity theft.<sup>5</sup>

#### **Florida Deceptive and Unfair Trade Practices Act**

The Florida Deceptive and Unfair Trade Practices Act (Act) declares that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.<sup>6</sup> Current law provides that a person who willfully uses, or has willfully used, a method, act, or practice that is unlawful under the Act is liable for a civil penalty of not more than \$10,000 for each violation.<sup>7</sup> The law includes heightened protection for senior citizens and disabled persons by providing that any person who willfully uses, or has willfully used, a method, act, or practice to victimize or attempt to victimize a senior citizen or disabled person is liable for a civil penalty of not more than \$15,000 for each violation.<sup>8</sup> Such act becomes a violation when a perpetrator knows or should have known that his or her conduct was unfair or deceptive.<sup>9</sup> The law further provides that restitution or reimbursement to the senior citizen or disabled person has priority in collection over the imposition of civil penalties.<sup>10</sup> Civil penalties collected pursuant to this law are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.<sup>11</sup>

#### **Financial Exploitation of Military Servicemembers**

Increasingly, military servicemembers and their families are becoming the victims of predatory behavior much like senior citizens and disabled persons. In 2006, Congress enacted the Military Personnel Financial Services Protection Act (Protection Act) to protect military servicemembers from unscrupulous practices regarding financial and investment products.<sup>12</sup> In the Protection Act, Congress found that military servicemembers were being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices.<sup>13</sup>

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<sup>1</sup> National Committee for the Prevention of Elder Abuse. *Financial Abuse*. ([http://www.preventelderabuse.org/elderabuse/fin\\_abuse.html](http://www.preventelderabuse.org/elderabuse/fin_abuse.html))(last visited March 14, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> NCSL, *Financial Crimes Against the Elderly 2012 Legislation*. January 15, 2013 (<http://www.ncsl.org/issues-research/banking/financial-crimes-against-the-elderly-2012-legis.aspx>)(last visited March 14, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Section 501.204(1), F.S.

<sup>7</sup> Section 501.2075, F.S.,

<sup>8</sup> Section 501.2077(2), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 501.2077(3), F.S.

<sup>11</sup> Section 501.2077(4), F.S.

<sup>12</sup> Public Law No: 109-290.

<sup>13</sup> *Id.*

The Protection Act provides no restitution for the victims or civil penalties for perpetrators, but aims to regulate the marketing and sale of securities and life insurance products on military bases. Among other things, the Protection Act:

- Bans the sale of securities products called periodic payment plans;
- Requires insurers and producers of life insurance products to make certain disclosures when selling or soliciting securities or life insurance products on military bases;
- Requires insurance companies to inform military personnel about subsidized life insurance offered by the federal government when marketing and selling insurance policies to them; and
- Requires the Department of Defense to maintain a list of brokers and agents barred from doing business on military bases or who have engaged in prohibited acts.<sup>14</sup>

The Federal Trade Commission (FTC) has also taken steps to protect military servicemembers from deceptive trade acts or practices. In doing so, the FTC expanded its Consumer Sentinel online database<sup>15</sup> to exclusively provide the military community a unique forum to submit consumer complaints to the FTC which are then made available to law enforcement. The complaints cover topics like identity theft, deceptive lending or mortgage practices, debt collection, phone fraud, or other scams. The FTC does not resolve individual disputes, but servicemembers' complaints help the FTC and its partners target cases for prosecution, shut down scammers, spot patterns of fraud before they become widespread, and alert the military community to scams.<sup>16</sup>

### **The Use of the Term “Handicapped Person”**

As society has continued to evolve and become more inclusive of individuals with physical and cognitive disabilities, the description of these conditions has also evolved. “Disability is a general term used for a functional limitation that interferes with a person's ability, for example, to walk, lift, heal, or learn. It may refer to a physical, sensory, or mental condition. Handicap can be used when citing laws and situations, but should never be used to describe a person or disability.”<sup>17</sup> There are examples throughout Florida Statutes of the use of both of the terms “handicapped person” and “person who has a disability.”<sup>18</sup> Generally, both terms have been used interchangeably. When possible, “handicap” should be avoided in describing a disability.<sup>19</sup> This is consistent with the terminology used in the most recent update to the Americans with Disabilities Act (ADA). The ADA uses the term “disability,” as opposed to the term “handicap.”<sup>20</sup>

### **Effect of the Bill**

The bill provides that a person who willfully uses, or has willfully used, a method, act, or practice directed at a military servicemember, or the spouse or dependent child of a military servicemember, is liable for a civil penalty of not more than \$15,000 for each violation. The bill provides that an order of restitution or reimbursement based on a violation against a military servicemember, or the spouse or dependent child of a military servicemember has priority in collections over the imposition of civil penalties.

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<sup>14</sup> *Id.*

<sup>15</sup> The FTC Consumer Sentinel is a unique investigative cyber tool that provides law enforcement access to millions of consumer complaints. See, <http://www.ftc.gov/sentinel/> (last visited April 1, 2013) for more information on the FTC Consumer Sentinel.

<sup>16</sup> FTC Consumer Military Sentinel. (<http://www.ftc.gov/sentinel/military/index.shtml>)(last visited March 14, 2013).

<sup>17</sup> University of Kansas Research and Training Center on Independent Living, *Guidelines for Reporting and Writing about People with Disabilities*, p. 4, (<http://www.rtcil.org/products/RTCIL%20publications/Media/Guidelines%20for%20Reporting%20and%20Writing%20about%20People%20with%20Disabilities.pdf>)(last visited March 14, 2013).

<sup>18</sup> Sections 193.623, 196.101, 286.26, and 320.0848, F.S.

<sup>19</sup> 2005 Associated Press Stylebook and Briefing on Media Law. p. 74,

([http://www.quarterboundpress.com/qbp/frequently\\_asked\\_questions\\_files/AP%20StyleGuide%202005.pdf](http://www.quarterboundpress.com/qbp/frequently_asked_questions_files/AP%20StyleGuide%202005.pdf))(last visited March 14, 2013).

<sup>20</sup> 42 U.S.C., Chapter 126.

The bill defines “military servicemember” as a person who is on active duty in, or a veteran of, the United States Armed Forces. The bill also defines the terms “active duty” and “veteran.”<sup>21</sup> The bill replaces the term “handicapped person” in s. 501.2077, F.S., with “a person who has a disability.”

The bill provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill provides that civil penalties collected pursuant to this law shall be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs (department) and allocated solely to the department for the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit senior citizens, and handicapped persons who have a disability, and military servicemembers or to further enforcement efforts.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

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<sup>21</sup>The bill provides that the term “active duty” has the same meaning as in s. 250.01, F.S., and the term “veteran” has the same meaning as in s. 1.01, F.S.