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## CONSUMER PROTECTION: OLDER AND DISABLED PERSONS

**House Bill 4223**

**Sponsor: Rep. Paul Wojno**

**Committee: Senior Health, Security and  
Retirement**

**Complete to 2-25-99**

### **A SUMMARY OF HOUSE BILL 4223 AS INTRODUCED 2-9-99**

The bill would amend the Consumer Protection Act to provide for an additional civil fine of up to \$10,000 to be levied against individuals who violated the act by victimizing older or disabled persons. (Older persons would mean individuals who are over the age of 60 and disabled would include those who have a disability as defined in section 216 of title II of the Social Security Act, chapter 531, 49 Stat. 620, 42 U.S.C. 416.) The bill would also specify that an action could be brought for a violation of the bill's provisions under sections of the act allowing the attorney general to bring an action for an injunction, accept an assurance of discontinuance from alleged violators, or bring a class action lawsuit. In addition, the bill would allow a prosecuting attorney to pursue an action under the bill's provisions in the same fashion as the attorney general.

A court could impose a civil fine of up to \$10,000, in addition to any other fine or penalty provided for in the Consumer Protection Act, for each act or omission that violated the provisions of the act and adversely affected an older or disabled person. Amounts collected under the bill's provisions would be first applied to any unpaid damages or attorney fees that had been ordered by the court with any amount in excess being deposited in the Older and Disabled Victims Fund. In making its determination as to the need for and amount of a potential civil fine for such violations, a court would be required to consider a number of issues, including:

- \*\* Whether the defendant's conduct disregarded the rights of the older or disabled person.
- \*\* Whether the defendant knew or should have known that his or her conduct was directed at an older or disabled person.
- \*\* Whether the older or disabled person, because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, was more vulnerable to the defendant's conduct and whether the older or disabled person actually suffered substantial physical, emotional, or economic damage as a result of the defendant's conduct.
- \*\* Whether the defendant knew or should have known that his or her conduct would cause mental or emotional distress.
- \*\* Whether the defendant's conduct caused an older or disabled person the loss of or encumbrance upon his or her primary residence, loss of or encumbrance upon his or her principal

employment or principal source of income, loss of funds received under a pension or retirement plan or a government benefits plan, or loss of assets essential to his or her health or welfare.

\*\* Any other factors that the court deems appropriate.

Older and Disabled Victims Fund. The bill would create the Older and Disabled Victims Fund in the state treasury. The state treasurer could deposit money or funds from whatever source into the fund, direct investments of the fund, and would be required to credit interest and earnings from fund investments to the fund. In addition, to the extent that the amounts exceeded any unpaid damages and attorney fees that had been ordered, money collected as fines for violations of the bill's provisions would be deposited in the state treasury and credited to the fund. Any money remaining in the fund at the end of the fiscal year would stay in the Older and Disabled Victims Fund rather than lapse into the general fund.

Education programs. The Office of Services to the Aging would be required to develop and implement a statewide educational program using money from the Older and Disabled Victims Fund. The purpose of this program would be to inform older persons and disabled persons, law enforcement agencies, the judicial system, social services professionals, and the general public about the prevalence and prevention of consumer crimes against older and disabled persons, as well as the bill's provisions, including the penalties and remedies for violations of those provisions. Money from the fund could be used to develop and implement this educational program and to provide other services as required by law. An annual accounting of the amount of money in the fund would be made by the treasurer and provided to the Office of Services to the Aging.

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