

IC 24-4.6-6

Chapter 6. Senior Consumer Protection

IC 24-4.6-6-1

Senior consumer protection act; application

Sec. 1. (a) This chapter shall be known and may be cited as the senior consumer protection act.

(b) This chapter does not apply to deception, intimidation, or other exploitation of a senior consumer in relation to insurance coverage or an insurance product that is regulated by the Indiana department of insurance. A senior consumer who is a victim of an act that is:

(1) described in section 4(a) or 4(b) of this chapter; and

(2) related to insurance coverage or an insurance product;

may report the act to the Indiana department of insurance for action by the insurance commissioner under IC 27. If the insurance commissioner determines that the person who committed the act is not subject to regulation by the Indiana department of insurance, the insurance commissioner shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter.

(c) This chapter does not apply to the exploitation of a senior consumer in relation to securities fraud that is regulated by the secretary of state's office. A senior consumer who is a victim of an act that is:

(1) described in section 4(a) or 4(b) of this chapter; and

(2) related to the Indiana uniform securities act under IC 23-19; shall report the act to the secretary of state under IC 23-19. If the secretary of state's office determines the person who committed the act is not subject to the regulation of the secretary of state's office, the secretary of state's office shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-2

Purposes and policies

Sec. 2. (a) This chapter shall be liberally construed and applied to protect senior consumers.

(b) The purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law concerning the ownership, control, and use of property or assets of senior consumers; and

(2) protect senior consumers from financial exploitation from persons, who by deception or intimidation, obtain control over the property or assets of a senior consumer.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-3

Definitions

Sec. 3. The following definitions apply throughout this chapter:

(1) "Deception" means:

(A) misrepresentation or omission of any material fact relating to the terms of a contract or agreement entered into with a senior consumer or to the existing or pre-existing condition of any of the property involved in such a contract or agreement; or

(B) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a senior consumer to enter into a contract or agreement.

(2) "Intimidation" means the conduct or communication by a person directed toward a senior consumer informing or implying to the senior consumer that the senior consumer will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment if the senior consumer does not comply with the person's demands.

(3) "Person" means an individual, a corporation, the state of Indiana or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, a nonprofit corporation or organization, a cooperative, or any other legal entity.

(4) "Person in a position of trust and confidence" means a person, in relation to a senior consumer, who:

(A) is a parent, spouse, adult child, or other relative by blood or marriage of the senior consumer;

(B) is a joint tenant or tenant in common with the senior consumer;

(C) has a legal or fiduciary relationship with the senior consumer;

(D) is a financial planning or investment professional; or

(E) is a paid or unpaid caregiver for the senior consumer.

(5) "Senior consumer" means an individual who is at least sixty (60) years of age.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-4

Financial exploitation of a senior consumer

Sec. 4. (a) A person commits financial exploitation of a senior consumer when the person knowingly and by deception or intimidation obtains control over the property of a senior consumer or illegally uses the assets or resources of a senior consumer.

(b) The illegal use of the assets or resources of a senior consumer includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, intimidation, or use of the assets or

resources contrary to law.

(c) Nothing in this section shall be construed to impose civil liability on a person who has made a good faith effort to assist a senior consumer in the management of the senior consumer's property, but through no fault of the person has been unable to provide such assistance.

(d) It is not a defense in an action under this chapter that a person reasonably believed that the victim was not a senior consumer.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-5

Action by senior consumer victim; remedies; action by attorney general

Sec. 5. (a) A senior consumer who is a victim of an act described in section 4(a) or 4(b) of this chapter may bring an action against the person who commits the act.

(b) In an action brought against a person under this section, the court may order the person to:

- (1) return property or assets improperly obtained, controlled, or used; and
- (2) reimburse the senior consumer for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this chapter.

(c) In addition to the remedy provided in subsection (b), a court may order the following:

- (1) For knowing violations committed by a person who is not in a position of trust and confidence:
 - (A) payment of two (2) times the amount of damages incurred or value of property or assets lost; and
 - (B) payment of a civil penalty not exceeding five thousand dollars (\$5,000).
- (2) For knowing violations committed by a person in a position of trust and confidence:
 - (A) payment of treble damages; and
 - (B) payment of a civil penalty not exceeding ten thousand dollars (\$10,000).

(d) The court may award reasonable attorney's fees to a senior consumer that prevails in an action under this section. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(e) The burden of proof in proving that a person committed financial exploitation of a senior consumer under section 4 of this chapter is by a preponderance of the evidence.

(f) The attorney general may bring an action to enjoin an alleged commission of financial exploitation of a senior consumer and may petition the court to freeze the assets of the person allegedly committing financial exploitation of a senior consumer in an amount equal to but not greater than the alleged value of lost property or

assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation of a senior consumer is by a preponderance of the evidence. In addition, the court may:

- (1) issue an injunction;
- (2) order the person to make payment of the money unlawfully received from the senior consumer or senior consumers, to be held in escrow for distribution to the aggrieved senior consumer or senior consumers;
- (3) for knowing violations, increase the amount of restitution ordered under subdivision (2) in any amount up to three (3) times the amount of damages incurred or value of property or assets lost;
- (4) order the person to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action;
- (5) provide for the appointment of a receiver;
- (6) for knowing violations by a person who is not in a position of trust and confidence, order the person to pay a civil penalty of up to five thousand dollars (\$5,000) per violation; and
- (7) for knowing violations by a person in a position of trust and confidence, order the person to pay a civil penalty of up to ten thousand dollars (\$10,000) per violation.

(g) In an action under subsection (a) or (f), the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(h) In an action under subsection (a), upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or other party or parties to give security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment, or on appeal.

(i) Any person who violates the terms of an injunction issued under subsection (f) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (f) has been violated, the court shall award reasonable costs to the state.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-6

Other rights and remedies available to senior consumers

Sec. 6. This chapter does not limit the rights or remedies that are otherwise available to a senior consumer under any other applicable provision of law.

As added by P.L.250-2013, SEC.1.