

(S. B. 1977)

(No. 206)

(Approved August 9, 2008)

AN ACT

To direct the Commissioner of Financial Institutions, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico, and the Office of the Insurance Commissioner to implement such necessary regulations in order to require that all financial institutions, cooperative associations, and insurance institutions in Puerto Rico shall establish a protocol to prevent and detect potential cases of financial exploitation of elderly persons or persons with disabilities; and for other purposes.

STATEMENT OF MOTIVES

Any form or mechanism of fraud is to be prevented and punished by the State. There is no doubt that the increase in fraud offenses against the elderly or persons with disabilities is intolerable. Many States of the American Nation have already criminalized financial exploitation as the most recent modality of fraud. Financial exploitation is defined as: the improper use of an adult's funds, property or resources by another individual including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets. (Pub. 4664-S/ Rep.12/06, New York Office of Children and Family Services.)

Some research studies conducted by the New York Office of Children and Family Services have allowed for the identification of recurrent behavior patterns shown by perpetrators of said financial exploitation. From the analysis of the collected information, it can be concluded that financial institution employees are at a vantage point to identify, first hand, the

financial abuse against elderly persons and adults with disabilities. Financial institution employees who have everyday contact with customers, witness situations that allow them to observe and assess whether the customer is at risk. Such employees are able to assess suspicious behaviors or banking activities that may help identify financial abuse. Banks and financial institutions may and should help protect their customers. Thus, through the present Act, the obligation to adopt a protocol so as to attempt to detect financial fraud against elderly persons and persons with disabilities is imposed. As an example, other protocols provide for employees to identify and inform an administrator designated in their financial institution about any suspected financial exploitation of an elderly person or a person with disabilities. The administrator should then decide if there is enough reason to refer the issue to the Advocate for the Elderly, to the Advocate for Persons with Disabilities or, in case of an emergency, to the Police.

The protocols to be promulgated shall be drafted taking into account the observations of the Office of the Advocate for the Elderly, the Advocate for Persons with Disabilities, and the Department of the Family, through the Auxiliary Administration of Services for the Elderly and Persons with Disabilities of the Administration of Family and Children.

For all of the above, in compliance with our legislative responsibility, we introduce this Act for the benefit and protection of our elderly population and persons with disabilities.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- The Commissioner of Financial Institutions, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico, and the Office of the Insurance Commissioner are hereby directed to implement such necessary regulations in order to require that all financial

institutions, cooperative associations, and insurance institutions which they regulate in Puerto Rico respectively, shall establish a protocol to prevent and detect potential cases of financial exploitation of elderly persons or persons with disabilities.

The regulations to be implemented shall be based on the observations, opinions, and recommendations of the Office of the Advocate for the Elderly, and the Department of the Family, through the Auxiliary Administration of Services for the Elderly and Persons with Disabilities of the Administration of Family and Children.

Section 2.- Regulations

For regulation purposes, in addition to those already established by the regulatory entities for each financial field, as identified in the first paragraph of Section 1 of this Act, and without it being understood as a limitation, among the activities that may constitute suspect financial transactions are frequent changes of an account from one bank branch to another, changes in the patterns or in the amounts withdrawn, as well as withdrawals of substantial sums of money, or considerable sums withdrawn or transferred from joint accounts to recently opened accounts.

Furthermore, a banking or financial transaction which is inconsistent with usual spending habits of the customer may be considerable withdrawals from previously inactive accounts or from savings accounts, or frequent withdrawals of money made through automated teller machines.

The abrupt interruption of regular rent or utilities payment made through checks, and the abrupt revocation of trusts established for a person, shall also be taken into consideration. On the other hand, suspicious signing of checks or other documents, such as credit card applications, shall also be considered.

Likewise, it shall also give rise to suspicion when there is an unexpected increase of debt incurred when the elderly person seems to have no reckoning of the transactions, among which could be: bank loans, second mortgages, considerable outstanding debts on credit cards or credit reserves.

Section 3.- Civil Immunity

No extra-contractual civil liability may be imposed on a person who provides information, in good faith, to the Commissioner of Financial Institutions, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico, the Insurance Commissioner or any law enforcement agency on fraudulent transactions relative to the financial exploitation of elderly persons that had been carried out, are being carried out or are to be carried out, except when bad faith or malicious prosecution is proven. In a civil action on malicious prosecution, it has to be proven that the malicious action was instigated without probable cause, that the cause of criminal action had a favorable outcome for the defendant, and that the latter suffered damages as a result of said criminal action.

Section 4.- If any part of this Act were found to be null by a court with competent jurisdiction, this ruling shall not affect nor invalidate the remainder of this Act, and its effect shall be limited to the aspect subject to such ruling.

Section 5.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 206 (S. B. 1977)** of the **7th Session of the 15th Legislature** of Puerto Rico:

AN ACT to direct the Commissioner of Financial Institutions, the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico, and the Office of the Insurance Commissioner to implement such necessary regulations in order to require that all financial institutions, cooperative associations, and insurance institutions in Puerto Rico shall establish a protocol to prevent and detect potential cases of financial exploitation of elderly persons or persons with disabilities; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 13th of November of 2009.

Solange I. De Lahongrais, Esq.
Director