
**Criminal Justice & Corrections
Committee**

HB 1215

Brief Description: Providing penalties for elder fraud.

Sponsors: Representatives O'Brien, Sullivan, Ahern, Hunt, Crouse, McMahan, Berkey, Conway and Chase.

Brief Summary of Bill

- Imposes fines for violations of fraud related crimes and the Consumer Protection Act against elderly persons.
- Allows civil forfeiture for violations of the Consumer Protection Act against elderly persons.

Hearing Date: 2/5/03

Staff: Jim Morishima (786-7191).

Background:

I. Fraud Related Crimes

There are several fraud related crimes including forgery, obtaining a signature by deception or duress, criminal impersonation, and false certification.

A person is guilty of forgery if he or she falsely makes, completes, or alters a written instrument or possesses, utters, offers, disposes of, or puts off as true a written instrument that he or she knows to be forged with the intent to injure or defraud. Forgery is a class C felony with a seriousness level of I. For a first-time offender, the standard range for this crime is zero-60 days.

A person is guilty of obtaining a signature by deception or duress if he or she causes another person to sign or execute a written instrument by deception or duress with the intent to defraud or deprive. Obtaining a signature by deception or duress is an unranked class C felony. The standard sentence range for this crime is zero-12 months.

A person guilty of criminal impersonation in the first degree if he or she: 1) assumes a false identity and acts in his or her assumed character to defraud another or for any other unlawful purpose or 2) pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with the intent to defraud another or for any other unlawful purpose. Criminal impersonation in the first degree is a gross misdemeanor. A person is guilty of criminal impersonation in the second degree if he or she: 1) claims to be a law enforcement officer, and 2) does an act, under circumstance not amounting to criminal impersonation in the first degree, with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer. Criminal impersonation in the second degree is a misdemeanor.

A person is guilty of false certification if he or she is an officer authorized to take a proof or acknowledgment of an instrument that by law may be recorded and knowingly certifies falsely that the execution of the instrument was acknowledged by any party thereto or the execution thereof was proved. False certification is a gross misdemeanor.

II. The Consumer Protection Act

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. The Attorney General may bring an action to enforce the provisions of the CPA. Also, a person injured by a violation of the CPA may bring a civil action in which the person may be awarded court costs, attorney fees, and treble damages.

III. Civil Forfeiture

There are many civil forfeiture statutes covering a wide variety of topics. Most civil forfeitures occur in the context of criminal violations. For example, the Uniform Controlled Substances Act provides for the civil forfeiture of materials and products used in the manufacture and distribution of illegal drugs. Other subjects involving civil forfeiture provisions include: animals, child pornography, cigarettes, drunk driving, driving with suspended licenses, explosives, and money laundering. Civil forfeiture statutes generally allow for notice and the opportunity to be heard for by the property owner. The standard of proof in civil forfeiture proceedings can be different from the underlying crime, so it is therefore possible for a person who is not charged with a crime or found not guilty of a crime to have his or her property seized.

Summary of Bill:

I. Fraud Related Crimes

If a person is found guilty of forgery, obtaining a signature by deception or duress, criminal impersonation, or false certification and the victim was an elderly person (defined as a person 60 years of age or older), the court must assess a penalty of up to \$10,000 for a felony offense and up to \$5,000 for a non-felony offense. Half of the money collected must be deposited in the Violence Reduction and Drug Enforcement Account and half the money must be deposited in the Public Safety and Education Account to be used solely for victims'

compensation programs.

II. The Consumer Protection Act

A person who violates the CPA must pay a civil penalty (going to the general fund) of up to \$10,000 per violation, if the violation was committed against an elderly person (defined as a person 60 years of age or older). The penalty is to be paid into the general fund. A violation of the CPA constitutes a separate violation with respect to each elderly person involved.

III. Civil Forfeiture

Proceeds traceable to or derived from specified unlawful activity (not defined) or a violation of the CPA are subject to civil forfeiture if the violation was committed against an elderly person. The Attorney General or county prosecuting attorney may file a civil action for the forfeiture of the proceeds. Real or personal property subject to forfeiture may be seized by a law enforcement officer upon process issued by a superior court with jurisdiction over the property. Seized real property may not be transferred or otherwise conveyed until 90 days after the seizure or until judgment of forfeiture is entered, whichever is later. Seizure without process may be made if the seizure is made incident to arrest or under a search warrant or the property has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture procedure based on the CPA.

Once the seizure has been made, the seizing law enforcement agency must provide notice to the owner of the seizure. If no person notifies the agency of the person's claim of ownership within 45 days (for personal property) or 90 days (for real property), the property is forfeited. If a person does notify the agency of his or her claim of ownership, the person must be afforded an opportunity to be heard as to the claim. The agency must immediately return the property if ordered to do so by a court or administrative law judge.

A portion of the forfeited property must be remitted to the State Treasurer. The remainder may be retained by the seizing law enforcement agency exclusively for the expansion and improvement of consumer protection related law enforcement activity. Money retained may not be used to supplant preexisting funding sources.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect ninety days after adjournment of session in which bill is passed.