

Reprinted

FILED FEB 20 1991

SENATE FILE 211
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 101)

Passed Senate, Date 2/27/91 (p. 474) Passed House, Date _____
Vote: Ayes 47 Nays 2 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to crimes against the elderly and disabled
2 persons by creating a cause of action, creating a special
3 fund, and providing a civil penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 211

S-3065

- 1 Amend Senate File 211 as follows:
- 2 1. Page 2, by striking lines 5 and 6, and
- 3 inserting the following:
- 4 "(4) Substantial loss of property."
- 5 2. Page 2, by striking lines 7 and 8, and
- 6 inserting the following:
- 7 "(5) Substantial loss of funds."
- 8 3. Page 2, by striking lines 9 and 10, and
- 9 inserting the following:
- 10 "(6) Substantial loss of assets."
- 11 4. Page 2, line 29, by striking the word "sixty-
- 12 five" and inserting the following: "sixty-two".

By LINN FUHRMAN

S-3065 FILED FEBRUARY 21, 1991

Adopted 2/27

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1 Section 1. NEW SECTION. 668B.1 CIVIL PENALTY AND CAUSE
2 OF ACTION FOR CERTAIN OFFENSES COMMITTED AGAINST ELDERLY OR
3 DISABLED -- FUND ESTABLISHED.

4 1. The court may impose upon a person who commits an
5 offense or violates any provision of chapter 82, 523A, 523B,
6 523E, 537, 557B, or 714, or commits another public offense,
7 and the offense or violation is committed against an older
8 person or disabled person, in addition to any other civil
9 penalty or criminal fine, an additional civil penalty not to
10 exceed five thousand dollars for each such violation. The
11 civil penalty may be imposed in any civil action against the
12 person as permitted in this section, section 714.16, or as
13 part of a sentence rendered upon a plea or verdict of guilty,
14 or a special verdict upon which a judgment of conviction may
15 be rendered.

16 A civil penalty imposed pursuant to this section shall be
17 paid to the treasurer of state, who shall deposit the money in
18 the elderly and disabled victim fund, a separate fund
19 administered by the attorney general for the investigation and
20 prosecution of crimes against the elderly or disabled.
21 Notwithstanding section 8.33, any balance in the fund on June
22 30 of any fiscal year shall not revert to the general fund of
23 the state.

24 2. In determining whether to impose a civil penalty under
25 subsection 1, the court shall consider the following:

26 a. Whether the defendant's conduct was in willful
27 disregard of the rights of the older person or disabled
28 person.

29 b. Whether the defendant knew or should have known that
30 the defendant's conduct was directed to an older person or
31 disabled person.

32 c. Whether the defendant's conduct caused an older person
33 or disabled person to suffer any of the following:

34 (1) Mental or emotional anguish.

35 (2) Loss of or encumbrance upon a primary residence of the

1 older person or disabled person.

2 (3) Loss of or encumbrance upon the older person's or
3 disabled person's principal employment or principal source of
4 income.

5 (4) Substantial loss of property set aside for retirement,
6 or for personal or family care and maintenance.

7 (5) Substantial loss of funds received under a pension or
8 retirement plan or a government benefits program.

9 (6) Loss of assets essential to the health and welfare of
10 the older person or disabled person.

11 d. Whether the older person or disabled person is
12 substantially more vulnerable to the defendant's conduct
13 because of age, poor health, infirmity, impaired
14 understanding, restricted mobility, or disability, than other
15 individuals, and whether the older person or disabled person
16 actually suffered substantial physical, emotional, or economic
17 damage resulting from the defendant's conduct.

18 e. Any other factors the court deems appropriate.

19 3. An older person or disabled person who suffers damage
20 or injury as a result of an offense or violation described in
21 subsection i, has a cause of action to recover actual damages,
22 including incidental and consequential damages, punitive
23 damages, if appropriate, and reasonable attorney fees.

24 Restitution ordered pursuant to this subsection has priority
25 over a civil penalty imposed by the court pursuant to
26 subsection l.

27 4. As used in this section, unless the context otherwise
28 requires:

29 a. "Older person" means a person who is sixty-five years
30 of age or older, or a surviving spouse who is fifty-five years
31 of age or older and whose spouse has died within the previous
32 five years.

33 b. "Disabled person" means a person who has a physical or
34 mental impairment which substantially limits one or more major
35 life activities of the person.

1 c. "Physical or mental impairment" means either of the
2 following:

3 (1) Physiological disorder or condition, disfigurement, or
4 anatomical loss substantially affecting one or more of the
5 following body systems:

6 (a) Neurological.

7 (b) Musculoskeletal.

8 (c) Special sense organs.

9 (d) Respiratory, including speech organs.

10 (e) Cardiovascular.

11 (f) Digestive.

12 (g) Genitourinary.

13 (h) Hemic and lymphatic.

14 (i) Skin.

15 (j) Endocrine.

16 (2) Mental or psychological disorder, such as mental
17 retardation, organic brain syndrome, emotional or mental
18 illness, or specific learning disabilities.

19 "Physical or mental impairment" includes, but is not
20 limited to, such diseases and conditions as locomotor
21 impairment, visual impairment, speech and hearing impairment,
22 cerebral palsy, epilepsy, muscular dystrophy, multiple
23 sclerosis, cancer, heart disease, diabetes, dementia,
24 depression, or impairment caused by the effects of prescribed
25 medications.

26 d. "Major life activities" means functions such as caring
27 for one's self, performing manual tasks, walking, seeing,
28 hearing, speaking, breathing, learning, and working.

29 EXPLANATION

30 This bill establishes a new chapter providing an additional
31 civil penalty to be imposed by the court of up to \$5,000 for
32 offenses or violations against older or disabled persons under
33 the door-to-door sales Act (chap. 82), the sales of funeral
34 services and merchandise Act (chap. 523A), the business
35 opportunity promotions Act (chap. 523B), sales of cemetery

1 merchandise Act (chap. 523E), the Iowa consumer credit code
2 (chap. 537), the membership campgrounds Act (chap. 557B), the
3 theft and fraud Act (chap. 714), or other criminal provisions.
4 The civil penalty is to be deposited in a fund for
5 investigation and prosecution of crimes against the elderly
6 and disabled. The fund will be administered by the attorney
7 general.

8 In assessing the penalty, the court is to look at whether
9 the defendant's conduct was in willful disregard of the rights
10 of the person, whether the defendant knew or should have known
11 that the person was an older person or disabled person,
12 whether any of a list of enumerated injuries have been
13 suffered by the older person or disabled person as a result of
14 the defendant's conduct, and whether the older person or
15 disabled person is substantially more vulnerable than others.

16 A cause of action is created against the person in favor of
17 the older person or disabled person whereby the plaintiff may
18 recover actual damages, punitive damages, if appropriate, and
19 reasonable attorney fees. Any restitution ordered in favor of
20 the older person or disabled person has priority over a civil
21 penalty imposed pursuant to this bill.

22 This bill defines an "older person" as a person who is 65
23 years of age or older or as a person 55 years of age or older
24 who has been widowed within the last five years, and a
25 "disabled person" as a person who has a physical or mental
26 impairment which substantially limits one or more major life
27 activities of the person. Other definitions are provided as
28 necessary.

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**SENATE FILE 211
FISCAL NOTE**

A fiscal note for Senate File 211 as amended and passed by the Senate is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 211 as amended and passed by the Senate creates the Elderly and Disabled Victim Fund which is administered by the Attorney General's Office to investigate and prosecute crimes against the elderly or disabled. The legislation defines "older person" as a person who is at least 62 years of age. Receipts to the Fund are generated from a civil penalty imposed on offenders who commit certain crimes against the elderly or disabled. The civil penalty may not exceed \$5,000 for each violation.

Receipts generated for the Fund are estimated to be \$25,000.

Source: Office of the Attorney General

(LSB 1251sv, BAL)

FILED APRIL 16, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

3602 amends all

1 Section 1. NEW SECTION. 668B.1 CIVIL PENALTY AND CAUSE
2 OF ACTION FOR CERTAIN OFFENSES COMMITTED AGAINST ELDERLY OR
3 DISABLED -- FUND ESTABLISHED.

4 1. The court may impose upon a person who commits an
5 offense or violates any provision of chapter 82, 523A, 523B,
6 523E, 537, 557B, or 714, or commits another public offense,
7 and the offense or violation is committed against an older
8 person or disabled person, in addition to any other civil
9 penalty or criminal fine, an additional civil penalty not to
10 exceed five thousand dollars for each such violation. The
11 civil penalty may be imposed in any civil action against the
12 person as permitted in this section, section 714.16, or as
13 part of a sentence rendered upon a plea or verdict of guilty,
14 or a special verdict upon which a judgment of conviction may
15 be rendered.

16 A civil penalty imposed pursuant to this section shall be
17 paid to the treasurer of state, who shall deposit the money in
18 the elderly and disabled victim fund, a separate fund
19 administered by the attorney general for the investigation and
20 prosecution of crimes against the elderly or disabled.
21 Notwithstanding section 8.33, any balance in the fund on June
22 30 of any fiscal year shall not revert to the general fund of
23 the state.

24 2. In determining whether to impose a civil penalty under
25 subsection 1, the court shall consider the following:

26 a. Whether the defendant's conduct was in willful
27 disregard of the rights of the older person or disabled
28 person.

29 b. Whether the defendant knew or should have known that
30 the defendant's conduct was directed to an older person or
31 disabled person.

32 c. Whether the defendant's conduct caused an older person
33 or disabled person to suffer any of the following:

34 (1) Mental or emotional anguish.

35 (2) Loss of or encumbrance upon a primary residence of the

1 older person or disabled person.

2 (3) Loss of or encumbrance upon the older person's or
3 disabled person's principal employment or principal source of
4 income.

5 (4) Substantial loss of property.

6 (5) Substantial loss of funds.

7 (6) Substantial loss of assets.

8 d. Whether the older person or disabled person is
9 substantially more vulnerable to the defendant's conduct
10 because of age, poor health, infirmity, impaired
11 understanding, restricted mobility, or disability, than other
12 individuals, and whether the older person or disabled person
13 actually suffered substantial physical, emotional, or economic
14 damage resulting from the defendant's conduct.

15 e. Any other factors the court deems appropriate.

16 3. An older person or disabled person who suffers damage
17 or injury as a result of an offense or violation described in
18 subsection 1, has a cause of action to recover actual damages,
19 including incidental and consequential damages, punitive
20 damages, if appropriate, and reasonable attorney fees.
21 Restitution ordered pursuant to this subsection has priority
22 over a civil penalty imposed by the court pursuant to
23 subsection 1.

24 4. As used in this section, unless the context otherwise
25 requires:

26 a. "Older person" means a person who is sixty-two years of
27 age or older, or a surviving spouse who is fifty-five years of
28 age or older and whose spouse has died within the previous
29 five years.

30 b. "Disabled person" means a person who has a physical or
31 mental impairment which substantially limits one or more major
32 life activities of the person.

33 c. "Physical or mental impairment" means either of the
34 following:

35 (1) Physiological disorder or condition, disfigurement, or

1 anatomical loss substantially affecting one or more of the
2 following body systems:

- 3 (a) Neurological.
- 4 (b) Musculoskeletal.
- 5 (c) Special sense organs.
- 6 (d) Respiratory, including speech organs.
- 7 (e) Cardiovascular.
- 8 (f) Digestive.
- 9 (g) Genitourinary.
- 10 (h) Hemic and lymphatic.
- 11 (i) Skin.
- 12 (j) Endocrine.

13 (2) Mental or psychological disorder, such as mental
14 retardation, organic brain syndrome, emotional or mental
15 illness, or specific learning disabilities.

16 "Physical or mental impairment" includes, but is not
17 limited to, such diseases and conditions as locomotor
18 impairment, visual impairment, speech and hearing impairment,
19 cerebral palsy, epilepsy, muscular dystrophy, multiple
20 sclerosis, cancer, heart disease, diabetes, dementia,
21 depression, or impairment caused by the effects of prescribed
22 medications.

23 d. "Major life activities" means functions such as caring
24 for one's self, performing manual tasks, walking, seeing,
25 hearing, speaking, breathing, learning, and working.

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SENATE FILE 211

H-3602

1 Amend Senate File 211, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause, and inserting the following:

5 "Section 1. NEW SECTION. 6689.1 CIVIL PENALTY
6 AND CAUSE OF ACTION FOR CONSUMER FRAUDS COMMITTED
7 AGAINST ELDERLY -- FUND ESTABLISHED.

8 1. If a person violates section 714.16, and the
9 violation is committed against an older person, in
10 addition to any other civil penalty, the court may
11 impose an additional civil penalty not to exceed five
12 thousand dollars for each such violation.

13 A civil penalty imposed pursuant to this section
14 shall be paid to the treasurer of state, who shall
15 deposit the money in the elderly victim fund, a
16 separate fund created in the state treasury and
17 administered by the attorney general for the
18 investigation and prosecution of frauds against the
19 elderly. Notwithstanding section 8.33, any balance in
20 the fund on June 30 of any fiscal year shall not
21 revert to the general fund of the state. An award of
22 restitution pursuant to section 714.16 has priority
23 over a civil penalty imposed by the court pursuant to
24 this subsection.

25 2. In determining whether to impose a civil
26 penalty under subsection 1, and the amount of any such
27 penalty, the court shall consider the following:

28 a. Whether the defendant's conduct was in willful
29 disregard of the rights of the older person.

30 b. Whether the defendant knew or should have known
31 that the defendant's conduct was directed to an older
32 person.

33 c. Whether the older person was substantially more
34 vulnerable to the defendant's conduct because of age,
35 poor health, infirmity, impaired understanding, re-
36 stricted mobility, or disability, than other persons.

37 d. Any other factors the court deems appropriate.

38 3. As used in this section, "older person" means a
39 person who is sixty-five years of age or older."

40 2. Title page, by striking lines 1 through 3, and
41 inserting the following: "An Act relating to consumer
42 frauds against the elderly, providing a civil penalty,
43 and creating a special fund."

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT
JAY of Appanose, Chairperson

H-3602 FILED APRIL 11, 1991

Adopted 4/16/91 (p 1280)

HOUSE AMENDMENT TO
SENATE FILE 211

S-3466

1 Amend Senate File 211, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause, and inserting the following:

5 "Section 1. NEW SECTION. 668B.1 CIVIL PENALTY
6 AND CAUSE OF ACTION FOR CONSUMER FRAUDS COMMITTED
7 AGAINST ELDERLY -- FUND ESTABLISHED.

8 1. If a person violates section 714.16, and the
9 violation is committed against an older person, in
10 addition to any other civil penalty, the court may
11 impose an additional civil penalty not to exceed five
12 thousand dollars for each such violation.

13 A civil penalty imposed pursuant to this section
14 shall be paid to the treasurer of state, who shall
15 deposit the money in the elderly victim fund, a
16 separate fund created in the state treasury and
17 administered by the attorney general for the
18 investigation and prosecution of frauds against the
19 elderly. Notwithstanding section 8.33, any balance in
20 the fund on June 30 of any fiscal year shall not
21 revert to the general fund of the state. An award of
22 restitution pursuant to section 714.16 has priority
23 over a civil penalty imposed by the court pursuant to
24 this subsection.

25 2. In determining whether to impose a civil
26 penalty under subsection 1, and the amount of any such
27 penalty, the court shall consider the following:

28 a. Whether the defendant's conduct was in willful
29 disregard of the rights of the older person.

30 b. Whether the defendant knew or should have known
31 that the defendant's conduct was directed to an older
32 person.

33 c. Whether the older person was substantially more
34 vulnerable to the defendant's conduct because of age,
35 poor health, infirmity, impaired understanding, re-
36 stricted mobility, or disability, than other persons.

37 d. Any other factors the court deems appropriate.

38 3. As used in this section, "older person" means a
39 person who is sixty-five years of age or older."

40 2. Title page, by striking lines 1 through 3, and
41 inserting the following: "An Act relating to consumer
42 frauds against the elderly, providing a civil penalty,
43 and creating a special fund."

RECEIVED FROM THE HOUSE

S-3466 FILED APRIL 18, 1991

Senate concurred 4/23/91 (p. 1409)

SENATE FILE 211
FISCAL NOTE

A fiscal note for Senate File 211 as amended and passed by the House is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 211 as amended and passed by the House creates the Elderly Victim Fund. This fund is administered by the Attorney General's Office to be used to investigate and prosecute offenders who commit consumer fraud offenses against older persons. The legislation defines "older person" as a person who is at least 65 years old. Receipts to the Fund are generated from a civil penalty imposed on offenders who commit consumer fraud offenses against the elderly. The civil penalty may not exceed \$5,000 for each violation.

Receipts generated for the Fund are estimated to be \$15,000.

Source: Office of the Attorney General

(LSB 1251SV.2, BAL)

FILED APRIL 18, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

STURGEON, CH.
GRONSTAL
PATE

SSB 101
JUDICIARY

SENATE/HOUSE FILE 211
BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to crimes against the elderly and disabled
2 persons by creating a cause of action, creating a special
3 fund, and providing a civil penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 668B.1 CIVIL PENALTY AND CAUSE
2 OF ACTION FOR CERTAIN OFFENSES COMMITTED AGAINST ELDERLY OR
3 DISABLED -- FUND ESTABLISHED.

4 1. The court may impose upon a person who commits an
5 offense or violates any provision of chapter 82, 523A, 523B,
6 523E, 537, 557B, or 714, or commits another public offense,
7 and the offense or violation is committed against an older
8 person or disabled person, in addition to any other civil
9 penalty or criminal fine, an additional civil penalty not to
10 exceed five thousand dollars for each such violation. The
11 civil penalty may be imposed in any civil action against the
12 person as permitted in this section, section 714.16, or as
13 part of a sentence rendered upon a plea or verdict of guilty,
14 or a special verdict upon which a judgment of conviction may
15 be rendered.

16 A civil penalty imposed pursuant to this section shall be
17 paid to the treasurer of state, who shall deposit the money in
18 the elderly and disabled victim fund, a separate fund
19 administered by the attorney general for the investigation and
20 prosecution of crimes against the elderly or disabled.
21 Notwithstanding section 8.33, any balance in the fund on June
22 30 of any fiscal year shall not revert to the general fund of
23 the state.

24 2. In determining whether to impose a civil penalty under
25 subsection 1, the court shall consider the following:

26 a. Whether the defendant's conduct was in willful
27 disregard of the rights of the older person or disabled
28 person.

29 b. Whether the defendant knew or should have known that
30 the defendant's conduct was directed to an older person or
31 disabled person.

32 c. Whether the defendant's conduct caused an older person
33 or disabled person to suffer any of the following:

34 (1) Mental or emotional anguish.

35 (2) Loss of or encumbrance upon a primary residence of the

1 older person or disabled person.

2 (3) Loss of or encumbrance upon the older person's or
3 disabled person's principal employment or principal source of
4 income.

5 (4) Substantial loss of property set aside for retirement,
6 or for personal or family care and maintenance.

7 (5) Substantial loss of funds received under a pension or
8 retirement plan or a government benefits program.

9 (6) Loss of assets essential to the health and welfare of
10 the older person or disabled person.

11 d. Whether the older person or disabled person is
12 substantially more vulnerable to the defendant's conduct
13 because of age, poor health, infirmity, impaired
14 understanding, restricted mobility, or disability, than other
15 individuals, and whether the older person or disabled person
16 actually suffered substantial physical, emotional, or economic
17 damage resulting from the defendant's conduct.

18 e. Any other factors the court deems appropriate.

19 3. An older person or disabled person who suffers damage
20 or injury as a result of an offense or violation described in
21 subsection 1, has a cause of action to recover actual damages,
22 including incidental and consequential damages, punitive
23 damages, if appropriate, and reasonable attorney fees.
24 Restitution ordered pursuant to this subsection has priority
25 over a civil penalty imposed by the court pursuant to
26 subsection 1.

27 4. As used in this section, unless the context otherwise
28 requires:

29 a. "Older person" means a person who is sixty-five years
30 of age or older, or a surviving spouse who is fifty-five years
31 of age or older and whose spouse has died within the previous
32 five years.

33 b. "Disabled person" means a person who has a physical or
34 mental impairment which substantially limits one or more major
35 life activities of the person.

1 c. "Physical or mental impairment" means either of the
2 following:

3 (1) Physiological disorder or condition, disfigurement, or
4 anatomical loss substantially affecting one or more of the
5 following body systems:

6 (a) Neurological.

7 (b) Musculoskeletal.

8 (c) Special sense organs.

9 (d) Respiratory, including speech organs.

10 (e) Cardiovascular.

11 (f) Digestive.

12 (g) Genitourinary.

13 (h) Hemic and lymphatic.

14 (i) Skin.

15 (j) Endocrine.

16 (2) Mental or psychological disorder, such as mental
17 retardation, organic brain syndrome, emotional or mental
18 illness, or specific learning disabilities.

19 "Physical or mental impairment" includes, but is not
20 limited to, such diseases and conditions as locomotor
21 impairment, visual impairment, speech and hearing impairment,
22 cerebral palsy, epilepsy, muscular dystrophy, multiple
23 sclerosis, cancer, heart disease, diabetes, dementia,
24 depression, or impairment caused by the effects of prescribed
25 medications.

26 d. "Major life activities" means functions such as caring
27 for one's self, performing manual tasks, walking, seeing,
28 hearing, speaking, breathing, learning, and working.

29 EXPLANATION

30 This bill establishes a new chapter providing an additional
31 civil penalty to be imposed by the court of up to \$5,000 for
32 offenses or violations against older or disabled persons under
33 the door-to-door sales Act (chap. 82), the sales of funeral
34 services and merchandise Act (chap. 523A), the business
35 opportunity promotions Act (chap. 523B), sales of cemetery

1 merchandise Act (chap. 523E), the Iowa consumer credit code
2 (chap. 537), the membership campgrounds Act (chap. 557B), the
3 theft and fraud Act (chap. 714), or other criminal provisions.
4 The civil penalty is to be deposited in a fund for
5 investigation and prosecution of crimes against the elderly
6 and disabled. The fund will be administered by the attorney
7 general.

8 In assessing the penalty, the court is to look at whether
9 the defendant's conduct was in willful disregard of the rights
10 of the person, whether the defendant knew or should have known
11 that the person was an older person or disabled person,
12 whether any of a list of enumerated injuries have been
13 suffered by the older person or disabled person as a result of
14 the defendant's conduct, and whether the older person or
15 disabled person is substantially more vulnerable than others.

16 A cause of action is created against the person in favor of
17 the older person or disabled person whereby the plaintiff may
18 recover actual damages, punitive damages, if appropriate, and
19 reasonable attorney fees. Any restitution ordered in favor of
20 the older person or disabled person has priority over a civil
21 penalty imposed pursuant to this bill.

22 This bill defines an "older person" as a person who is 65
23 years of age or older or as a person 55 years of age or older
24 who has been widowed within the last five years, and a
25 "disabled person" as a person who has a physical or mental
26 impairment which substantially limits one or more major life
27 activities of the person. Other definitions are provided as
28 necessary.

29 BACKGROUND STATEMENT

30 SUBMITTED BY THE AGENCY

31 This legislation is needed to provide an additional
32 deterrent in the form of a civil penalty to those persons who
33 victimize older and disabled Iowans in home repair scams,
34 business opportunity scams, frauds, thefts, fraudulent
35 practices, and other crimes. This legislation constitutes a

1 civil procedure and does not affect any criminal action
2 dictated by current statutes. However, the civil penalty
3 provided for in this chapter may be based on a criminal
4 conviction. In such cases, it would be imposed by the court
5 at the time of sentencing on the criminal charge. The civil
6 penalty provided for in this chapter does not diminish a
7 victim's right to recover restitution and damages.

8 The victims this chapter seeks to protect include a growing
9 segment of some of the most vulnerable people in our society.
10 When older or disabled persons are the targets of consumer and
11 criminal schemes, the victims may require state and federal
12 government assistance for their health and welfare. For
13 example, if an older person loses his or her life savings in
14 an oil lease investment scheme, that person may be required to
15 rely on public assistance for their welfare. Under the
16 circumstances, it is suitable to provide for a civil penalty.

17 The goal is to deter perpetrators of frauds and other
18 crimes from targeting the older and disabled Iowan by making
19 the crime less profitable. The bill enhances enforcement by
20 making it less profitable. The legislation also enhances
21 enforcement by making it clear that older and disabled persons
22 have a private cause of action under the consumer fraud Act to
23 enforce their rights, and recover damages, reasonable
24 attorney's fees, and if appropriate, punitive damages.
25 Allowance for attorney's fees and punitive damages will allow
26 older and disabled Iowans to obtain legal representation in
27 these cases that they might not otherwise be able to afford.

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SENATE FILE 211

AN ACT
RELATING TO CONSUMER FRAUDS AGAINST THE ELDERLY, PROVIDING
A CIVIL PENALTY, AND CREATING A SPECIAL FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 668B.1 CIVIL PENALTY AND CAUSE
OF ACTION FOR CONSUMER FRAUDS COMMITTED AGAINST ELDERLY --
FUND ESTABLISHED.

1. If a person violates section 714.16, and the violation
is committed against an older person, in addition to any other
civil penalty, the court may impose an additional civil
penalty not to exceed five thousand dollars for each such
violation.

A civil penalty imposed pursuant to this section shall be
paid to the treasurer of state, who shall deposit the money in
the elderly victim fund, a separate fund created in the state
treasury and administered by the attorney general for the
investigation and prosecution of frauds against the elderly.
Notwithstanding section 8.33, any balance in the fund on June
30 of any fiscal year shall not revert to the general fund of
the state. An award of restitution pursuant to section 714.16
has priority over a civil penalty imposed by the court
pursuant to this subsection.

2. In determining whether to impose a civil penalty under
subsection 1, and the amount of any such penalty, the court
shall consider the following:

- a. Whether the defendant's conduct was in willful
disregard of the rights of the older person.
- b. Whether the defendant knew or should have known that
the defendant's conduct was directed to an older person.

c. Whether the older person was substantially more
vulnerable to the defendant's conduct because of age, poor
health, infirmity, impaired understanding, restricted
mobility, or disability, than other persons.

d. Any other factors the court deems appropriate.

3. As used in this section, "older person" means a person
who is sixty-five years of age or older.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 211, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 6, 1991

TERRY E. BRANSTAD
Governor