

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**

# **A Bill**

**ACT 138 OF 1993**  
**SENATE BILL 12**

4 **By: Senators Hardin and Miles**

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## **For An Act To Be Entitled**

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 4, CHAPTER 88 TO ADD  
9 SUBCHAPTER 2 TO ENHANCE PENALTIES WHEN ELDER AND DISABLED  
10 PERSONS ARE TARGETED FOR FRAUD; TO CREATE AN ELDER AND  
11 DISABLED VICTIMS FUND; AND FOR OTHER PURPOSES."

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### **Subtitle**

14 **"AN ACT TO AMEND THE DECEPTIVE TRADE PRACTICES**  
15 **ACT TO ENHANCE PENALTIES WHEN ELDER AND**  
16 **DISABLED PERSONS ARE TARGETED FOR FRAUD."**

17

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

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20 **SECTION 1. Arkansas Code Title 4, Chapter 88 is hereby amended by inserting**  
21 **Subchapter 2 at the end thereof to read as follows:**

22 **"SUBCHAPTER 2 - ENHANCED PENALTIES WHEN ELDER OR DISABLED**  
23 **PERSONS ARE TARGETED.**

24 **4-88-201. Definitions.**

25 **(a) \_Elder person\_ means a person who is sixty years of age or older.**

26 **(b) \_Disabled person\_ means a person who has physical and/or mental impairment**  
27 **which substantially limits one or more of such person's major life activities.**

28 **(1) As used in this subdivision, \_physical or mental impairment\_ means any of**  
29 **the following:**

30 **(i) Any physiological disorder or condition, cosmetic disfigurement, or**  
31 **anatomical loss substantially affecting one or more of the following body systems: neurological;**  
32 **musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular;**  
33 **reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.**

34 **(ii) Any mental or psychological disorder, such as mental retardation, organic**  
35 **brain syndrome, emotional or mental illness, and specific learning disabilities. The term**  
36 **\_physical or mental impairment\_ includes, but is not limited to, such diseases and conditions**

1 as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular  
2 dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and  
3 emotional illness.

4 (c) **\_Substantially limits\_ means *substantially* interferes with or affects over an**  
5 **extended period of time. Minor temporary ailments or injuries shall not be considered physical**  
6 **or mental impairments which substantially limit a person's major life activities. Examples of**  
7 **minor temporary ailments are colds, influenza, or sprains or minor injuries.**

8 (d) **\_Major life activities\_ includes functions such as caring for one's self, performing**  
9 **manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.**

10 **4-88-202. Civil penalty; Disposition of Funds.**

11 (a) **If any person is found to have violated any provision of this chapter, including**  
12 **unlawful practices related to charitable solicitations, and said violation is committed against**  
13 **elder or disabled persons, in addition to any civil penalty otherwise set forth or imposed, the**  
14 **court may impose an additional civil penalty not to exceed ten thousand dollars (\$10,000) for**  
15 **each violation.**

16 (b) **The civil penalties imposed pursuant to paragraph (a) of this subsection shall be**  
17 **deposited with the state treasurer and placed into the \_Elder and Disabled Victims Fund,\_ a**  
18 **special fund created in the state treasury and administered by the Attorney General for the**  
19 **investigation and prosecution of deceptive acts against elder and disabled persons and for**  
20 **consumer education initiatives.**

21 **4-88-203. Determination of civil penalty.**

22 **In determining whether to impose an enhanced civil penalty under this subchapter and**  
23 **the amount thereof, the court shall consider the extent to which one or more of the following**  
24 **factors are present:**

25 (a) **Whether the defendant's conduct was in disregard of the rights of the elder or**  
26 **disabled persons;**

27 (b) **Whether the defendant knew or should have known that the defendant's conduct**  
28 **was directed to an elder person or disabled person;**

29 (c) **Whether the elder or disabled person was more vulnerable to the defendant's**  
30 **conduct because of age, poor health, infirmity, impaired understanding, restricted mobility or**  
31 **disability than other persons and whether the elder or disabled person actually suffered**  
32 **substantial physical, emotional or economic damage resulting from the defendant's conduct;**

33 (d) **Whether the defendant's conduct caused an elder or disabled person to suffer any**  
34 **of the following:**

35 (1) **Mental or emotional anguish;**

1                   **(2) Loss of or encumbrance upon a primary residence of the elder or disabled**  
2 **person;**

3                   **(3) Loss of or encumbrance upon the elder or disabled person's principal**  
4 **employment or principal source of income;**

5                   **(4) Loss of funds received under a pension or retirement plan or a government**  
6 **benefits program;**

7                   **(5) Loss of property set aside for retirement or for personal or family care and**  
8 **maintenance; or**

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

11           **(e) Any other factors the court deems appropriate.**

12           **4-88-204. Cause of action.**

13           **An elder or disabled person who suffers damage or injury as a result of an offense or**  
14 **violation described in this Chapter has a cause of action to recover actual damages, punitive**  
15 **damages, if appropriate, and reasonable attorney's fees. Restitution ordered pursuant to this**  
16 **Section has priority over a civil penalty imposed pursuant to this Subchapter.**

17           **4-88-205. Education initiatives.**

18           **The Attorney General shall, pursuant to the funds allocated in this subchapter, develop**  
19 **and implement state-wide educational initiatives to inform elder persons and disabled persons,**  
20 **law enforcement agencies, the judicial system, social services professionals and the general**  
21 **public as to the prevalence and prevention of consumer crimes against elder and disabled**  
22 **persons, the provisions of this Chapter, the penalties for violations of such Act and the**  
23 **remedies available for victims of such violations.**

24           **4-88-206. Referrals for abuse, neglect and exploitation.**

25           **The Attorney General shall establish and maintain referral procedures with the**  
26 **Division of Aging and Adult Services within the Arkansas Department of Human Services in**  
27 **order to provide any necessary intervention and assistance to elder or disabled persons who**  
28 **may have been victimized by violations of this Chapter."**

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30           **SECTION 2. Elder and Disabled Victims Fund created.**

31           **The "Elder and Disabled Victims Fund" is hereby created and established on the books**  
32 **of the State Treasurer, State Auditor, and Chief Fiscal Officer of the State, and shall consist of**  
33 **those special funds as may be provided by law. This fund shall be used for the investigation and**  
34 **prosecution of deceptive acts against elder and disabled persons and for consumer education**  
35 **initiatives directed toward elder and disabled persons, law enforcement officers, the judicial**

