

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

# A Bill

**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."  
12

## Subtitle

13  
14 "AN ACT TO AMEND THE DECEPTIVE TRADE PRACTICES ACT TO  
15 ENHANCE PENALTIES WHEN ELDER AND DISABLED PERSONS ARE  
16 TARGETED FOR FRAUD."  
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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  
21 inserting Subchapter 2 at the end thereof to read as follows:

22 "SUBCHAPTER 2 - ENHANCED PENALTIES WHEN ELDER OR DISABLED PERSONS ARE  
23 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  
27 impairment which substantially limits one or more of such person's major life  
28 activities.

29 (1) As used in this subdivision, physical or mental impairment  
30 means any of the following:

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

1           (ii) Any mental or psychological disorder, such as mental  
2 retardation, organic brain syndrome, emotional or mental illness, and specific  
3 learning disabilities. The term physical or mental impairment includes, but  
4 is not limited to, such diseases and conditions as orthopedic, visual, speech  
5 and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple  
6 sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional  
7 illness.

8           (c) Substantially limits means *substantially* interferes with or  
9 affects over an extended period of time. Minor temporary ailments or injuries  
10 shall not be considered physical or mental impairments which substantially  
11 limit a person's major life activities. Examples of minor temporary ailments  
12 are colds, influenza, or sprains or minor injuries.

13           (d) Major life activities includes functions such as caring for one's  
14 self, performing manual tasks, walking, seeing, hearing, speaking, breathing,  
15 learning and working.

16           4-88-202. Civil penalty; Disposition of Funds.

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

23           (b) The civil penalties imposed pursuant to paragraph (a) of this  
24 subsection shall be deposited with the state treasurer and placed into the  
25 Elder and Disabled Victims Fund, a special fund created in the state  
26 treasury and administered by the Attorney General for the investigation and  
27 prosecution of deceptive acts against elder and disabled persons and for  
28 consumer education initiatives.

29           4-88-203. Determination of civil penalty.

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

33           (a) Whether the defendant's conduct was in disregard of the rights of  
34 the elder or disabled persons;

35           (b) Whether the defendant knew or should have known that the

1 defendant's conduct was directed to an elder person or disabled person;

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

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

9 (1) Mental or emotional anguish;

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

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

14 (4) Loss of funds received under a pension or retirement plan or  
15 a government benefits program;

16 (5) Loss of property set aside for retirement or for personal or  
17 family care and maintenance; or

18 (6) Loss of assets essential to the health and welfare of the  
19 elder or disabled person.

20 (e) Any other factors the court deems appropriate.

21 4-88-204. Cause of action.

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

27 4-88-205. Education initiatives.

28 The Attorney General shall, pursuant to the funds allocated in this  
29 subchapter, develop and implement state-wide educational initiatives to inform  
30 elder persons and disabled persons, law enforcement agencies, the judicial  
31 system, social services professionals and the general public as to the  
32 prevalence and prevention of consumer crimes against elder and disabled  
33 persons, the provisions of this Chapter, the penalties for violations of such  
34 Act and the remedies available for victims of such violations.

35 4-88-206. Referrals for abuse, neglect and exploitation.

1           The Attorney General shall establish and maintain referral procedures  
2 with the Division of Aging and Adult Services within the Arkansas Department  
3 of Human Services in order to provide any necessary intervention and  
4 assistance to elder or disabled persons who may have been victimized by  
5 violations of this Chapter."  
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7           SECTION 2. Elder and Disabled Victims Fund created.

8           The "Elder and Disabled Victims Fund" is hereby created and established  
9 on the books of the State Treasurer, State Auditor, and Chief Fiscal Officer  
10 of the State, and shall consist of those special funds as may be provided by  
11 law. This fund shall be used for the investigation and prosecution of  
12 deceptive acts against elder and disabled persons and for consumer education  
13 initiatives directed toward elder and disabled persons, law enforcement  
14 officers, the judicial system, social services professionals, and the general  
15 public on the provisions of this article and related statutes.  
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17           SECTION 3. All provisions of this act of a general and permanent  
18 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
19 Code Revision Commission shall incorporate the same in the Code.  
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21           SECTION 4. If any provision of this act or the application thereof to  
22 any person or circumstance is held invalid, such invalidity shall not affect  
23 other provisions or applications of the act which can be given effect without  
24 the invalid provision or application, and to this end the provisions of this  
25 act are declared to be severable.  
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27           SECTION 5. All laws and parts of laws in conflict with this act are  
28 hereby repealed.  
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30                                   */s/Senators Hardin and Miles*  
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