



NEW YORK STATE SENATOR

Hugh T. Farley

Sen. Farley Reports Senate Passes Package of Bills to Fight the Financial Exploitation of Senior Citizens

HUGH T. FARLEY June 16, 2014

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State Senator Hugh T. Farley (R, C, I – Schenectady) reports that he and his colleagues in the New York State Senate recently passed a package of eight bills to prevent criminals from using financial schemes to prey upon senior citizens. The measures were recommended in a report released by the Senate Majority Coalition in May that examined this growing issue that affects thousands of senior New Yorkers each year.

The type of elder abuse relating to financial exploitation involves the illegal taking, misuse, or concealment of funds, property, or assets of a senior for someone else's benefit. It can result in the significant monetary loss for the victim, and in some cases, a person's entire life savings. Financial exploitation can range from the theft of cash, to much more elaborate schemes.

Unfortunately, these incidents often times go unreported due to the startling fact that the abuser is someone that the victim either trusts, is a caregiver, or more often than not, is a family relative. Moreover, the rate of Alzheimer's disease and other dementias that undermine judgment increases with age, thus leaving seniors more vulnerable.

The bills help prevent deceptive financial transactions from taking place, update the collection of data methods to track abuse statewide, and amend existing law to stiffen penalties to deter criminal acts from occurring in the first place.

The bills include:

- Bill S6221: authorizes banks to refuse a transaction if the banking institution, social services official, or law enforcement agency reasonably believes that financial exploitation of a vulnerable adult has occurred or may occur.
- Bill S7177: seeks to establish that an alleged abuser may not use the defense of obtained consent to take, withhold, or obtain property, where such consent was obtained from a person who the accused knew or had reason to know was mentally disabled. This measure would help a mentally-infirm elderly victim by establishing in law that they cannot give meaningful consent, such as when an abuser on trial claims the assets taken from the victim were a gift.

- Bill S7179: allows prosecutors to obtain medical records of mentally impaired victims of financial exploitation, without requiring a waiver from those very victims. Although victims in other types of cases routinely waive their privilege so that prosecutors can obtain crucial medical records, mentally impaired victims cannot consent to waiving their medical privilege any more than they can consent to having their property taken.
- Bill S2323A: requires the Office of Children and Family Services (OCFS) to define, identify and collect data related to the incidence of elder abuse possessed by state and local agencies. It also mandates OCFS to establish an inter-agency reporting system that contains a uniform set of standards to collect and analyze information on the incidence of elder abuse.
- Bill S7187: amends the penal law to explicitly state that in a prosecution for larceny by false promise, partial performance does not, by itself, prevent a reasonable jury from making such finding from all the facts and circumstances. As an illustration, this would apply to a case where a dishonest contractor demands full, up-front payment for services, starts the project, but never completes the promised work.
- Bill S2951: expands the definition of “caregiver” under the penal law to include a person who voluntarily, or otherwise by operation of law, (such as an appointed guardian or power of attorney) assumes responsibility of an elderly person so that they would be tried under the “endangering the welfare of a vulnerable elderly person” law.

On Tuesday, June 10, the Senate gave final legislative passage to:

- Bill S7188: would allow a caregiver to accompany a vulnerable elderly person who is testifying in front of a grand jury. The caregiver may only fulfill their function with the consent of the prosecutor.

On Tuesday, June 10, the Senate also passed:

- Bill S7178: allows the prosecution and defense attorneys to preserve the testimony of witnesses who are age 75 or older. This would help prevent elder abuse offenders from trying to "game the system" by delaying a trial in the hope that an older witness will succumb to conditions associated with advanced age or pass away before trial.

The bills will be sent to the Assembly, except for S7188, which has previously passed the Assembly and will be sent to the Governor for consideration.