



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S. 1041 Introduced on February 22, 2018
Author: Davis
Subject: Vulnerable Adults
Requestor: Senate Banking and Insurance
RFA Analyst(s): Heineman, Gardner, Mitchell, and Shuford
Impact Date: March 19, 2018 - Updated for Additional Agency Response

Estimate of Fiscal Impact

	FY 2018-19	FY 2019-20
State Expenditure		
General Fund	Undetermined	\$0
Other and Federal	Undetermined	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	\$0
Other and Federal	Undetermined	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

Fiscal Impact Summary

This bill will have no expenditure impact for the Department of Social Services or the Lieutenant Governor’s Office, because the implementation of this bill will not materially impact the activities of these agencies. The expenditure impact for Department of Consumer Affairs (DCA) is undermined, as the agency is unable to estimate how many complaints they may receive, and actions will depend upon available resources.

The expenditure impact of this bill on the General Fund, Federal Funds, or Other Funds is undetermined for the Department of Corrections, Judicial Department, Commission on Prosecution Coordination, and Commission on Indigent Defense, because of the lack of empirical data, including information on the patterns of arrests, numbers of cases, convictions, and judicial discretion in sentencing.

The impact on Other Funds revenue is undetermined, because DCA does not have data to estimate the revenue it would receive from imposing penalties on violators of this bill.

This fiscal impact statement has been updated based on a response from the South Carolina Department of Corrections.

Explanation of Fiscal Impact

**Updated for Additional Agency Response
Introduced on February 22, 2018**

State Expenditure

This bill amends current law by adding that a vulnerable adult, an authorized representative, or the estate of an injured vulnerable adult may file a civil action against a person who financially exploits a vulnerable adult. Damages recovered in a civil action may be three times the amount of actual damages or \$3,000 for each violation, whichever is greater, as well as reasonable attorney's fees and court costs. In addition, a person seeking damages may pursue a civil action to enjoin and restrain future acts financially exploiting a vulnerable adult.

Upon conviction, a person violating the provisions of this legislation can be guilty of a misdemeanor or felony, depending upon the value of the money or property obtained or sought to be obtained. For amounts less than \$2,000, the person may be convicted of a misdemeanor and fined not less than \$1,000 or imprisoned for not more than thirty days, or both. A person may be guilty of a felony if the value is over \$2,000. For amounts between \$2,000 and \$10,000, the person must be fined in the discretion of the court or imprisoned for not more than five years, or both. If the total value is \$10,000 or more, the person must be fined in the discretion of the court or imprisoned for not more than ten years, or both. In addition, violations may be considered grounds for revocation, suspension, or non-renewal of a professional license or registration issued by an agency of South Carolina.

This fiscal impact statement has been updated based on a response from the South Carolina Department of Corrections.

Department of Consumer Affairs. The department indicates they receive complaints from people who meet the vulnerable adult definition, but they do not have data to estimate the number of complaints that would prompt an enforcement action. Additionally, actions taken by the department will depend upon available resources. Therefore, the expenditure impact on the General Fund and Other Funds is undetermined.

Department of Social Services (DSS). This bill requires DSS, as a person legally authorized on behalf of a vulnerable adult, to file civil actions to enforce the provisions of this bill. DSS indicates that this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds of the agency because the Omnibus Adult Protection Act (APA) requires DSS to investigate non-criminal reports of alleged abuse, neglect, and exploitation of vulnerable adults. Therefore, the violations against vulnerable adults described in this bill can be investigated currently by DSS as exploitation pursuant to the APA.

Lieutenant Governor's Office on Aging. The agency indicates that this bill does not fiscally or materially impact the activities of the office. As such, the bill does not impact the General Fund, Other Funds, or Federal Funds.

Department of Corrections. Due to the lack of empirical data, including information on the patterns of arrests, convictions, and judicial discretion in sentencing, the expenditure impact of the bill on the General Fund, Federal Funds, or Other Funds is undetermined. This fiscal impact

statement has been updated based on a response from the South Carolina Department of Corrections.

Judicial Department. This bill would create a new civil cause of action for damages to vulnerable adults that would be within the jurisdiction of common pleas courts or magistrate courts, depending on the amount of the claim. The new bill would also permit persons seeking damages to “pursue a civil action to enjoin and restrain [certain] future acts.” While generally magistrate courts do not have jurisdiction to grant this type of equitable relief unless specifically given authority in the statute, it is unknown whether persons will be able to seek injunctive relief as the magistrate’s level or whether they will be required to seek that relief in the common pleas courts. However, it is anticipated that most of these civil actions would be brought in the common pleas courts.

As this bill creates new civil causes of action, there is no data to determine the additional number of hearings or trials which may be held. It is unclear how many of these types of cases will be filed. However, it is anticipated that any additional costs in common pleas courts, as a result of the bill, would be absorbed by the General Fund related to the department. Should this bill result in a significant number of additional hearings or trials in common pleas courts, it could result in an increased backlog for the Circuit Court as a whole. Any additional costs to magistrate courts resulting from the adoption of § 37-6-119 would be borne by the counties.

In addition, this bill would create new criminal offenses for financial exploitation of a vulnerable adult. The offenses created by this proposed legislation would be handled in magistrate courts, municipal courts, or general sessions courts and would increase the caseload within those courts. However, as the bill creates new offenses, there is no data available with which to estimate the number of hearings or trials that may be initiated; even so, it is likely that some of the offenses that would be within the terms of this statute have been previously prosecuted under existing law. It is anticipated that any impact to the General Fund would be absorbed within current resources. Any additional costs to magistrates or municipal courts resulting from the adoption of § 37-6-119 would be managed within existing resources.

Commission on Prosecution Coordination. Due to the lack of empirical data, including information on the patterns of arrests, convictions, and judicial discretion in sentencing, the expenditure impact of the bill on the General Fund, Federal Funds, or Other Funds is undetermined.

Commission on Indigent Defense. Due to the lack of empirical data, including information on the patterns of arrests, convictions, and judicial discretion in sentencing, the expenditure impact of the bill on the General Fund, Federal Funds, or Other Funds is undetermined.

State Revenue

This bill amends current law by giving authority to the administrator of the Department of Consumer Affairs (DCA) to issue an administrative order to cease and desist and to return property or money received that violates the provisions of this bill. In addition, the administrator of DCA may impose penalties of up to \$10,000 per violation and bring a civil action seeking

equitable relief. Penalties received shall be retained by the agency for the administration of this title.

DCA receives complaints from people who meet the definition of a vulnerable adult, but they do not have data to estimate the number of complaints that would require an enforcement action. Therefore, the amount of funds the department could receive in penalties is unknown. As a result, the impact of this bill on Other Funds revenue is undetermined.

Local Expenditure

N/A

Local Revenue

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Frank A. Rainwater, Executive Director