

112TH CONGRESS
2D SESSION

S. 3598

To protect elder adults from exploitation and financial crime, to prevent elder adult abuse and financial exploitation, and to promote safety for elder adults.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect elder adults from exploitation and financial crime, to prevent elder adult abuse and financial exploitation, and to promote safety for elder adults.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Robert Matava Exploitation Protection for Elder Adults
6 Act of 2012”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—FEDERAL PROSECUTION OF ABUSE AND EXPLOITATION
DIRECTED AT ELDERS

Sec. 101. Enhanced penalty for telemarketing and email-marketing fraud directed at elders.

Sec. 102. Data collection.

TITLE II—COORDINATION OF CIVIL PROTECTIONS AND CRIMINAL
PROSECUTION AS IT RELATES TO ELDER JUSTICE

Sec. 201. Model States laws and practices.

Sec. 202. Civil protection and criminal prosecution.

TITLE III—INTERSTATE INITIATIVES

Sec. 301. Interstate agreements and compacts.

Sec. 302. Recommendations on interstate communication.

TITLE IV—GAO REPORT

Sec. 401. GAO report to assess cost of elder abuse on Federal programs.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act—

3 (1) the terms “abuse”, “elder”, “elder justice”,
4 “exploitation”, and “neglect” have the meanings
5 given those terms in section 2011 of the Social Security
6 Act (42 U.S.C. 1397j);

7 (2) the term “adult protective services”—

8 (A) means such services provided to adults
9 as specified in Federal, State, or local law pertaining to adult protective services; and
10

11 (B) includes services such as—

12 (i) receiving reports of adult abuse,
13 neglect, or exploitation;

14 (ii) investigating the reports described
15 in clause (i);

1 (iii) case planning, monitoring, evalua-
 2 tion, and other case work and services; and

3 (iv) providing, arranging for, or facili-
 4 tating the provision of medical, social serv-
 5 ice, economic, legal, housing, law enforce-
 6 ment, or other protective emergency, or
 7 support services;

8 (3) the term “caregiver”—

9 (A) means an individual who has the re-
 10 sponsibility for the care of an elder either vol-
 11 untarily, by contract, by receipt of payment for
 12 care, or as a result of the operation of law; and

13 (B) shall include a family member or other
 14 individual who provides (on behalf of such indi-
 15 vidual or of a public or private agency, organi-
 16 zation, or institution) compensated or uncom-
 17 pensated care to an elder who needs supportive
 18 services in any setting;

19 (4) the term “elder abuse” includes neglect and
 20 exploitation;

21 (5) the term “fiduciary”—

22 (A) means an individual or entity with the
 23 legal responsibility—

24 (i) to make decisions on behalf of and
 25 for the benefit of another individual; and

1 (ii) to act in good faith and with fair-
 2 ness; and

3 (B) shall include—

4 (i) a trustee;

5 (ii) a guardian;

6 (iii) a conservator;

7 (iv) an executor;

8 (v) an agent under a financial power
 9 of attorney or health care power of attor-
 10 ney; or

11 (vi) a representative payee; and

12 (6) the term “State” means any of the several
 13 States, the District of Columbia, the Commonwealth
 14 of Puerto Rico, the Virgin Islands of the United
 15 States, Guam, American Samoa, and the Common-
 16 wealth of the Mariana Islands.

17 **TITLE I—FEDERAL PROSECU-**
 18 **TION OF ABUSE AND EXPLOI-**
 19 **TATION DIRECTED AT EL-**
 20 **DERs**

21 **SEC. 101. ENHANCED PENALTY FOR TELEMARKETING AND**
 22 **EMAIL-MARKETING FRAUD DIRECTED AT EL-**
 23 **DERs.**

24 (a) IN GENERAL.—Chapter 113A of title 18, United
 25 States Code, is amended—

1 (1) in the chapter heading by inserting “**AND**
 2 **EMAIL MARKETING**” after “**TELE-**
 3 **MARKETING**”;

4 (2) by striking section 2325 and inserting the
 5 following:

6 **“SEC. 2325. DEFINITION.**

7 “In this chapter, the term ‘telemarketing or email
 8 marketing’—

9 “(1) means a plan, program, promotion, or
 10 campaign that is conducted to induce—

11 “(A) purchases of goods or services;

12 “(B) participation in a contest or sweep-
 13 stakes;

14 “(C) a charitable contribution, donation, or
 15 gift of money or any other thing of value;

16 “(D) investment for financial profit;

17 “(E) participation in a business oppor-
 18 tunity;

19 “(F) commitment to a loan; or

20 “(G) participation in a fraudulent medical
 21 study, research study, or pilot study,

22 by use of 1 or more interstate telephone calls,
 23 emails, text messages, or electronic instant messages
 24 initiated either by a person who is conducting the
 25 plan, program, promotion, or campaign or by a pro-

1 spective purchaser or contest or sweepstakes partici-
2 pant or charitable contributor, donor, or investor;
3 and

4 “(2) does not include the solicitation of sales
5 through the posting, publication, or mailing of a
6 catalog that—

7 “(A) contains a written description or il-
8 lustration of the goods or services offered for
9 sale;

10 “(B) includes the business address of the
11 seller;

12 “(C) includes multiple pages of written
13 material or illustration; and

14 “(D) has been issued not less frequently
15 than once a year,

16 if the person making the solicitation does not solicit
17 customers by telephone, email, text message, or elec-
18 tronic instant message, but only receives interstate
19 telephone calls, emails, text messages, or electronic
20 instant messages initiated by customers in response
21 to the catalog and in response to those interstate
22 telephone calls, emails, text messages, or electronic
23 instant messages does not conduct further sollicita-
24 tion;” and

1 (3) in section 2326, in the matter preceding
2 paragraph (1)—

3 (A) by striking “or 1344” and inserting
4 “1344, or 1347 or section 1128B of the Social
5 Security Act (42 U.S.C. 1320a–7b)”; and

6 (B) by inserting “or email marketing”
7 after “telemarketing”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—

9 The table of chapters at the beginning of part I of title
10 18, United States Code, is amended by striking the item
11 relating to chapter 113A and inserting the following:

“113A. Telemarketing and email marketing fraud 2325”.

12 **SEC. 102. DATA COLLECTION.**

13 The Attorney General, in consultation with the Sec-
14 retary of Health and Human Services, shall, on an annual
15 basis—

16 (1) collect from Federal, State, and local law
17 enforcement agencies and prosecutor offices statis-
18 tical data relating to the incidence of elder abuse, in-
19 cluding data relating to—

20 (A) the number of elder abuse cases re-
21 ferred to law enforcement agencies, adult pro-
22 tective services, or any other State entity tasked
23 with addressing elder abuse;

24 (B) the number and types of cases filed in
25 Federal, State, and local courts; and

1 (C) the outcomes of the cases described in
 2 subparagraphs (A) and (B) and the reasons for
 3 such outcomes;

4 (2) identify common data points among Fed-
 5 eral, State, and local law enforcement agencies and
 6 prosecutor offices that would allow for the collection
 7 of uniform national data;

8 (3) publish a summary of the data collected
 9 under paragraphs (1) and (2);

10 (4) identify—

11 (A) the types of data relevant to elder
 12 abuse that should be collected; and

13 (B) what entity is most capable of col-
 14 lecting the data described in subparagraph (A);
 15 and

16 (5) develop recommendations for collecting ad-
 17 ditional data relating to elder abuse.

18 **TITLE II—COORDINATION OF**
 19 **CIVIL PROTECTIONS AND**
 20 **CRIMINAL PROSECUTION AS**
 21 **IT RELATES TO ELDER JUS-**
 22 **TICE**

23 **SEC. 201. MODEL STATES LAWS AND PRACTICES.**

24 The Attorney General, in consultation with the Sec-
 25 retary of Health and Human Services and the Elder Jus-

1 tice Coordinating Council (established under section 2021
2 of the Social Security Act (42 U.S.C. 1397k)), shall—

3 (1) create, compile, evaluate, and disseminate
4 materials and information, and provide the nec-
5 essary training and technical assistance, to assist
6 States and units of local government in—

7 (A) investigating, prosecuting, pursuing,
8 preventing, understanding, and mitigating the
9 impact of—

10 (i) physical, sexual, and psychological
11 abuse of elders;

12 (ii) exploitation of elders, including fi-
13 nancial abuse and scams targeting elders;
14 and

15 (iii) neglect of elders; and

16 (B) assessing, addressing, and mitigating
17 the physical and psychological trauma to vic-
18 tims of elder abuse;

19 (2) collect data and perform an evidence-based
20 evaluation to—

21 (A) assure the efficacy of measures and
22 methods intended to prevent, detect, respond to,
23 or redress elder abuse; and

24 (B) evaluate the number of victims of elder
25 abuse in each State and the extent to which the

1 needs of the victims are served by crime victim
2 services, programs, and sources of funding;

3 (3) publish a report, on an annual basis, that
4 describes the results of the evaluations conducted
5 under paragraphs (1) and (2), and submit the report
6 to each Federal agency, each State, and the Com-
7 mittee on the Judiciary and the Special Committee
8 on Aging of the Senate and the Committee on the
9 Judiciary of the House of Representatives;

10 (4) evaluate training models to determine best
11 practices, create replication guides, create training
12 materials, if necessary, for law enforcement officers,
13 prosecutors, judges, emergency responders, individ-
14 uals working in victim services, adult protective serv-
15 ices, social services, and public safety, medical per-
16 sonnel, mental health personnel, financial services
17 personnel, and any other individuals whose work
18 may bring them in contact with elder abuse regard-
19 ing how to—

20 (A) conduct investigations in elder abuse
21 cases;

22 (B) address evidentiary issues and other
23 legal issues; and

24 (C) appropriately assess, respond to, and
25 interact with victims and witnesses in elder

1 abuse cases, including in administrative, civil,
2 and criminal judicial proceedings;

3 (5) conduct, and update on a regular basis, a
4 study of laws and practices relating to elder abuse,
5 neglect, and exploitation, including—

6 (A) a comprehensive description of State
7 laws and practices;

8 (B) an analysis of the effectiveness of
9 State laws and practices, including—

10 (i) whether the State laws are en-
11 forced; and

12 (ii) if enforced—

13 (I) how the State laws are en-
14 forced; and

15 (II) how enforcement of the State
16 laws has effected elder abuse within
17 the State;

18 (C) a review of State definitions of the
19 terms “abuse”, “neglect”, and “exploitation” in
20 the context of elder abuse cases;

21 (D) a review of State laws that mandate
22 reporting of elder abuse, including adult protec-
23 tive services laws, laws that require the report-
24 ing of nursing home deaths or suspicious deaths

1 of elders to coroners or medical examiners, and
2 other pertinent reporting laws, that analyzes—

3 (i) the impact and efficacy of the
4 State laws;

5 (ii) whether the State laws are en-
6 forced;

7 (iii) the levels of compliance with the
8 State laws; and

9 (iv) the response to, and actions taken
10 as a result of, reports made under the
11 State laws;

12 (E) a review of State evidentiary, proce-
13 dural, sentencing, choice of remedies, and data
14 retention issues relating to elder abuse, neglect,
15 and exploitation;

16 (F) a review of State fiduciary laws, in-
17 cluding law relating to guardianship, con-
18 servatorship, and power of attorney;

19 (G) a review of State laws that permit or
20 encourage employees of depository institutions
21 (as defined in section 3(c)(1) of the Federal
22 Deposit Insurance Act (12 U.S.C. 1813(c)(1))
23 and State credit unions (as defined in section
24 101 of the Federal Credit Union Act (12

1 U.S.C. 1752)) to prevent and report suspected
 2 elder abuse, neglect, and exploitation;

3 (H) a review of State laws used in civil
 4 court proceedings to prevent and address elder
 5 abuse;

6 (I) a review of State laws relating to fraud
 7 and related activities in connection with mail,
 8 telemarketing, the Internet, or health care;

9 (J) a review of State laws that create pro-
 10 grams, offices, entities, or other programs that
 11 address or respond to elder abuse; and

12 (K) an analysis of any other State laws re-
 13 lating to elder abuse; and

14 (6) carry out such other duties as the Attorney
 15 General determines necessary in connection with en-
 16 hancing the understanding, prevention, detection,
 17 and response to elder abuse.

18 **SEC. 202. CIVIL PROTECTION AND CRIMINAL PROSECU-**
 19 **TION.**

20 (a) ESTABLISHMENT.—

21 (1) IN GENERAL.—The Attorney General, in co-
 22 operation with the Secretary of Health and Human
 23 Services and the Legal Services Corporation, shall
 24 establish a demonstration program to provide grants
 25 on an annual basis to not more than 6 civil legal

1 services entities that could prevent or provide rem-
2 edies for abuse, neglect, and exploitation and col-
3 laborate with other organizations seeking to prevent,
4 detect, and respond to elder abuse.

5 (2) ELIGIBILITY.—Grants awarded under para-
6 graph (1) shall be provided to entities that dem-
7 onstrate a commitment to representation of elder
8 abuse victims or potential victims and participating
9 in multidisciplinary and interagency efforts to com-
10 bat elder abuse.

11 (b) REQUIREMENTS.—To receive a grant under this
12 section an entity shall—

13 (1) be an experienced nonprofit legal services
14 provider; and

15 (2) propose or demonstrate—

16 (A) collaboration with State or local aging,
17 social, and human services and law enforcement
18 agencies;

19 (B) partnership with professionals with
20 knowledge and experience relating to the crimi-
21 nal justice system; and

22 (C) methodology for timely evidenced-based
23 evaluation.

24 (c) REPORT.—Not later than 6 months after the com-
25 pletion of the demonstration program under this section,

1 the Secretary shall submit to Congress a report on such
 2 program, that includes the results of the program and rec-
 3 ommendations for such legislation and administrative ac-
 4 tion as the Attorney and Secretary determines to be ap-
 5 propriate.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 7 are authorized to be appropriated to the Attorney General
 8 such sums as are necessary for fiscal years 2013 through
 9 2017 to carry out this section.

10 **TITLE III—INTERSTATE** 11 **INITIATIVES**

12 **SEC. 301. INTERSTATE AGREEMENTS AND COMPACTS.**

13 The consent of Congress is given to any 2 or more
 14 States (acting through State agencies with jurisdiction
 15 over adult protective services) to enter into agreements or
 16 compacts for cooperative effort and mutual assistance—

17 (1) in promoting the safety and well-being of el-
 18 ders; and

19 (2) in enforcing their respective laws and poli-
 20 cies to promote such safety and well-being.

21 **SEC. 302. RECOMMENDATIONS ON INTERSTATE COMMU-** 22 **NICATION.**

23 The Executive Director of the State Justice Institute,
 24 in consultation with State or local aging, social, and
 25 human services and law enforcement agencies and nation-

1 ally recognized nonprofit associations with expertise in
2 data sharing among criminal justice agencies and famili-
3 arity with the issues raised in elder exploitation cases,
4 shall submit to Congress legislative proposals relating to
5 the facilitation of interstate agreements and compacts.

6 **TITLE IV—GAO REPORT**

7 **SEC. 401. GAO REPORT TO ASSESS COST OF ELDER ABUSE** 8 **ON FEDERAL PROGRAMS.**

9 Not later than 1 year after the date of enactment
10 of this Act, the Comptroller General of the United States,
11 in consultation with the Secretary of Health and Human
12 Services, the Department of Health and Human Services
13 Office of the Inspector General, the Attorney General, and
14 the Chairman of the Federal Trade Commission, shall
15 publish a report reviewing any findings on the financial
16 cost to the Federal Government from the abuse and exploi-
17 tation of elders.

