

# HB2778



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB2778**

Introduced 2/26/2007, by Rep. Michael J. Madigan - Barbara Flynn Currie - Robert S. Molaro

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-1.3

from Ch. 38, par. 16-1.3

Amends the Criminal Code of 1961. Makes a technical change in a Section concerning financial exploitation of an elderly person.

LRB095 01132 RLC 21134 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 16-1.3 as follows:

6 (720 ILCS 5/16-1.3) (from Ch. 38, par. 16-1.3)

7 Sec. 16-1.3. Financial exploitation of an elderly person or  
8 a person with a disability.

9 (a) A person commits the ~~the~~ offense of financial  
10 exploitation of an elderly person or a person with a disability  
11 when he or she stands in a position of trust or confidence with  
12 the elderly person or a person with a disability and he or she  
13 knowingly and by deception or intimidation obtains control over  
14 the property of an elderly person or a person with a disability  
15 or illegally uses the assets or resources of an elderly person  
16 or a person with a disability. The illegal use of the assets or  
17 resources of an elderly person or a person with a disability  
18 includes, but is not limited to, the misappropriation of those  
19 assets or resources by undue influence, breach of a fiduciary  
20 relationship, fraud, deception, extortion, or use of the assets  
21 or resources contrary to law.

22 Financial exploitation of an elderly person or a person  
23 with a disability is a Class 4 felony if the value of the

1 property is \$300 or less, a Class 3 felony if the value of the  
2 property is more than \$300 but less than \$5,000, a Class 2  
3 felony if the value of the property is \$5,000 or more but less  
4 than \$100,000 and a Class 1 felony if the value of the property  
5 is \$100,000 or more or if the elderly person is over 70 years  
6 of age and the value of the property is \$15,000 or more or if  
7 the elderly person is 80 years of age or older and the value of  
8 the property is \$5,000 or more.

9 (b) For purposes of this Section:

10 (1) "Elderly person" means a person 60 years of age or  
11 older.

12 (2) "Person with a disability" means a person who  
13 suffers from a permanent physical or mental impairment  
14 resulting from disease, injury, functional disorder or  
15 congenital condition that impairs the individual's mental  
16 or physical ability to independently manage his or her  
17 property or financial resources, or both.

18 (3) "Intimidation" means the communication to an  
19 elderly person or a person with a disability that he or she  
20 shall be deprived of food and nutrition, shelter,  
21 prescribed medication or medical care and treatment.

22 (4) "Deception" means, in addition to its meaning as  
23 defined in Section 15-4 of this Code, a misrepresentation  
24 or concealment of material fact relating to the terms of a  
25 contract or agreement entered into with the elderly person  
26 or person with a disability or to the existing or

1 pre-existing condition of any of the property involved in  
2 such contract or agreement; or the use or employment of any  
3 misrepresentation, false pretense or false promise in  
4 order to induce, encourage or solicit the elderly person or  
5 person with a disability to enter into a contract or  
6 agreement.

7 (c) For purposes of this Section, a person stands in a  
8 position of trust and confidence with an elderly person or  
9 person with a disability when he (1) is a parent, spouse, adult  
10 child or other relative by blood or marriage of the elderly  
11 person or person with a disability, (2) is a joint tenant or  
12 tenant in common with the elderly person or person with a  
13 disability, (3) has a legal or fiduciary relationship with the  
14 elderly person or person with a disability, or (4) is a  
15 financial planning or investment professional.

16 (d) Nothing in this Section shall be construed to limit the  
17 remedies available to the victim under the Illinois Domestic  
18 Violence Act of 1986.

19 (e) Nothing in this Section shall be construed to impose  
20 criminal liability on a person who has made a good faith effort  
21 to assist the elderly person or person with a disability in the  
22 management of his or her property, but through no fault of his  
23 or her own has been unable to provide such assistance.

24 (f) It shall not be a defense to financial exploitation of  
25 an elderly person or person with a disability that the accused  
26 reasonably believed that the victim was not an elderly person

1 or person with a disability.

2 (g) Civil Liability. A person who is charged by information  
3 or indictment with the offense of financial exploitation of an  
4 elderly person or person with a disability and who fails or  
5 refuses to return the victim's property within 60 days  
6 following a written demand from the victim or the victim's  
7 legal representative shall be liable to the victim or to the  
8 estate of the victim in damages of treble the amount of the  
9 value of the property obtained, plus reasonable attorney fees  
10 and court costs. The burden of proof that the defendant  
11 unlawfully obtained the victim's property shall be by a  
12 preponderance of the evidence. This subsection shall be  
13 operative whether or not the defendant has been convicted of  
14 the offense.

15 (Source: P.A. 92-808, eff. 8-21-02; 93-301, eff. 1-1-04.)