



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5653

Introduced 2/15/2012, by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-56

was 720 ILCS 5/16-1.3

Amends the Criminal Code of 1961 concerning financial exploitation of an elderly person or a person with a disability. Includes in the definition of intimidation, criminal intimidation. Includes in the definition of a person who stands in a position of trust and confidence with an elderly person or person with a disability, a paid or unpaid caregiver for the elderly person or person with a disability. Provides that if a person is charged with financial exploitation of an elderly person or a person with a disability that involves the taking or loss of more than \$5,000, a prosecuting attorney may file a petition with the circuit court of the county in which the defendant has been charged to freeze the assets of the defendant for purposes of restitution to the victim. Provides that the burden of proof that the defendant unlawfully obtained the victim's property shall be by a preponderance of the evidence. Provides that this provision is operative whether or not the defendant has been convicted of the offense.

LRB097 18560 RLC 66006 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

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 17-56 as follows:

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

7 Sec. 17-56. Financial exploitation of an elderly person or  
8 a person with a disability.

9 (a) A person commits financial exploitation of an elderly  
10 person or a person with a disability when he or she stands in a  
11 position of trust or confidence with the elderly person or a  
12 person with a disability and he or she knowingly and by  
13 deception or intimidation obtains control over the property of  
14 an elderly person or a person with a disability or illegally  
15 uses the assets or resources of an elderly person or a person  
16 with a disability.

17 (b) Sentence. Financial exploitation of an elderly person  
18 or a person with a disability is: (1) a Class 4 felony if the  
19 value of the property is \$300 or less, (2) a Class 3 felony if  
20 the value of the property is more than \$300 but less than  
21 \$5,000, (3) a Class 2 felony if the value of the property is  
22 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony  
23 if the value of the property is \$50,000 or more or if the

1 elderly person is over 70 years of age and the value of the  
2 property is \$15,000 or more or if the elderly person is 80  
3 years of age or older and the value of the property is \$5,000  
4 or more.

5 (c) For purposes of this Section:

6 (1) "Elderly person" means a person 60 years of age or  
7 older.

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

14 (3) "Intimidation" means the communication to an  
15 elderly person or a person with a disability that he or she  
16 shall be deprived of food and nutrition, shelter,  
17 prescribed medication or medical care and treatment or  
18 conduct as provided in Section 12-6 of this Code.

19 (4) "Deception" means, in addition to its meaning as  
20 defined in Section 15-4 of this Code, a misrepresentation  
21 or concealment of material fact relating to the terms of a  
22 contract or agreement entered into with the elderly person  
23 or person with a disability or to the existing or  
24 pre-existing condition of any of the property involved in  
25 such contract or agreement; or the use or employment of any  
26 misrepresentation, false pretense or false promise in

1 order to induce, encourage or solicit the elderly person or  
2 person with a disability to enter into a contract or  
3 agreement.

4 The illegal use of the assets or resources of an elderly  
5 person or a person with a disability includes, but is not  
6 limited to, the misappropriation of those assets or resources  
7 by undue influence, breach of a fiduciary relationship, fraud,  
8 deception, extortion, or use of the assets or resources  
9 contrary to law.

10 A person stands in a position of trust and confidence with  
11 an elderly person or person with a disability when he (i) is a  
12 parent, spouse, adult child or other relative by blood or  
13 marriage of the elderly person or person with a disability,  
14 (ii) is a joint tenant or tenant in common with the elderly  
15 person or person with a disability, (iii) has a legal or  
16 fiduciary relationship with the elderly person or person with a  
17 disability, ~~or~~ (iv) is a financial planning or investment  
18 professional, or (v) is a paid or unpaid caregiver for the  
19 elderly person or person with a disability.

20 (d) Limitations. Nothing in this Section shall be construed  
21 to limit the remedies available to the victim under the  
22 Illinois Domestic Violence Act of 1986.

23 (e) Good faith efforts. Nothing in this Section shall be  
24 construed to impose criminal liability on a person who has made  
25 a good faith effort to assist the elderly person or person with  
26 a disability in the management of his or her property, but

1 through no fault of his or her own has been unable to provide  
2 such assistance.

3 (f) Not a defense. It shall not be a defense to financial  
4 exploitation of an elderly person or person with a disability  
5 that the accused reasonably believed that the victim was not an  
6 elderly person or person with a disability.

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

20 (h) If a person is charged with financial exploitation of  
21 an elderly person or a person with a disability that involves  
22 the taking or loss of more than \$5,000, a prosecuting attorney  
23 may file a petition with the circuit court of the county in  
24 which the defendant has been charged to freeze the assets of  
25 the defendant for purposes of restitution to the victim. The  
26 burden of proof that the defendant unlawfully obtained the

1 victim's property shall be by a preponderance of the evidence.

2 This subsection is operative whether or not the defendant has

3 been convicted of the offense.

4 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12.)