



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2749

Introduced 2/21/2013, by Rep. Mike Smiddy

SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-56

was 720 ILCS 5/16-1.3

Amends the Criminal Code of 2012. Includes in the offense of financial exploitation of an elderly person or a person with a disability knowingly by undue influence, force, or threat of force obtaining control over the property of an elderly person or a person with a disability or illegally using the assets or resources of an elderly person or a person with a disability. Adds a definition of "undue influence". Expands the definition of "intimidation" to include a threat of physical or emotional harm to an elderly person or a person with a disability.

LRB098 08176 RLC 38272 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 2012 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, undue influence, force, or threat
14 of force obtains control over the property of an elderly person
15 or a person with a disability or illegally uses the assets or
16 resources of an elderly person or a person 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 a threat of physical or
15 emotional harm to an elderly person or a person with a
16 disability, or the communication to an elderly person or a
17 person with a disability that he or she shall be deprived
18 of food and nutrition, shelter, prescribed medication or
19 medical care and treatment or conduct as provided in
20 Section 12-6 of this Code.

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

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

6 (5) "Undue influence" means domination, coercion,
7 manipulation, or any other act exercised by another person
8 to the extent that an elderly person or a person with a
9 disability is prevented from exercising free judgment and
10 choice.

11 The illegal use of the assets or resources of an elderly
12 person or a person with a disability includes, but is not
13 limited to, the misappropriation of those assets or resources
14 by undue influence, breach of a fiduciary relationship, fraud,
15 deception, extortion, or use of the assets or resources
16 contrary to law.

17 A person stands in a position of trust and confidence with
18 an elderly person or person with a disability when he (i) is a
19 parent, spouse, adult child or other relative by blood or
20 marriage of the elderly person or person with a disability,
21 (ii) is a joint tenant or tenant in common with the elderly
22 person or person with a disability, (iii) has a legal or
23 fiduciary relationship with the elderly person or person with a
24 disability, (iv) is a financial planning or investment
25 professional, or (v) is a paid or unpaid caregiver for the
26 elderly person or person with a disability.

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

4 (e) Good faith efforts. Nothing in this Section shall be
5 construed to impose criminal liability on a person who has made
6 a good faith effort to assist the elderly person or person with
7 a disability in the management of his or her property, but
8 through no fault of his or her own has been unable to provide
9 such assistance.

10 (f) Not a defense. It shall not be a defense to financial
11 exploitation of an elderly person or person with a disability
12 that the accused reasonably believed that the victim was not an
13 elderly person or person with a disability.

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

1 (h) If a person is charged with financial exploitation of
2 an elderly person or a person with a disability that involves
3 the taking or loss of property valued at more than \$5,000, a
4 prosecuting attorney may file a petition with the circuit court
5 of the county in which the defendant has been charged to freeze
6 the assets of the defendant in an amount equal to but not
7 greater than the alleged value of lost or stolen property in
8 the defendant's pending criminal proceeding for purposes of
9 restitution to the victim. The burden of proof required to
10 freeze the defendant's assets shall be by a preponderance of
11 the evidence.

12 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
13 97-865, eff. 1-1-13.)