



Sen. Andy Manar

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1 AMENDMENT TO HOUSE BILL 2898

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2898, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Criminal Code of 2012 is amended by  
6 changing Section 17-56 as follows:

7 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

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

10 (a) A person commits financial exploitation of an elderly  
11 person or a person with a disability when ~~he or she stands in a~~  
12 ~~position of trust or confidence with the elderly person or a~~  
13 ~~person with a disability and he or she:~~

14 (1) knowingly and by deception or intimidation obtains  
15 control over the property of an elderly person or a person  
16 with a disability, or illegally uses the assets or

1 resources of an elderly person or a person with a  
2 disability; or

3 (2) knowingly obtains control over the property of an  
4 elderly person or a person with a disability when he or she  
5 knows or reasonably should know that the elderly person or  
6 person with a disability lacks the capacity to consent.

7 (b) Sentence. Financial exploitation of an elderly person  
8 or a person with a disability is: (1) a Class 4 felony if the  
9 value of the property is \$300 or less, (2) a Class 3 felony if  
10 the value of the property is more than \$300 but less than  
11 \$5,000, (3) a Class 2 felony if the value of the property is  
12 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony  
13 if the value of the property is \$50,000 or more or if the  
14 elderly person is over 70 years of age and the value of the  
15 property is \$15,000 or more or if the elderly person is 80  
16 years of age or older and the value of the property is \$5,000  
17 or more.

18 (c) For purposes of this Section:

19 (1) "Elderly person" means a person 60 years of age or  
20 older.

21 (2) "Person with a disability" means a person who  
22 suffers from a physical or mental impairment resulting from  
23 disease, injury, functional disorder or congenital  
24 condition that impairs the individual's mental or physical  
25 ability to independently manage his or her property or  
26 financial resources, or both.

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

6           (4) "Deception" means, in addition to its meaning as  
7 defined in Section 15-4 of this Code, a misrepresentation  
8 or concealment of material fact relating to the terms of a  
9 contract or agreement entered into with the elderly person  
10 or person with a disability or to the existing or  
11 pre-existing condition of any of the property involved in  
12 such contract or agreement; or the use or employment of any  
13 misrepresentation, false pretense or false promise in  
14 order to induce, encourage or solicit the elderly person or  
15 person with a disability to enter into a contract or  
16 agreement.

17           (5) "Lacks the capacity to consent" means an impairment  
18 by reason of mental illness, developmental disability,  
19 intellectual disability, organic brain disorder, physical  
20 illness or disability, chronic use of drugs, chronic  
21 intoxication, short-term memory loss, or other cause, that  
22 causes an elderly person or disabled adult to lack  
23 sufficient understanding or capacity to make or  
24 communicate reasonable decisions concerning the elderly  
25 person's or disabled adult's person or property.

26           (6) The illegal use of the assets or resources of an

1 elderly person or a person with a disability includes, but  
2 is not limited to, the misappropriation of those assets or  
3 resources by undue influence, breach of a fiduciary  
4 relationship, fraud, deception, extortion, or use of the  
5 assets or resources contrary to law.

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

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

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

25 (f) Not a defense. It shall not be a defense to financial  
26 exploitation of an elderly person or person with a disability

1 that the accused reasonably believed that the victim was not an  
2 elderly person or person with a disability.

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

16 (h) If a person is charged with financial exploitation of  
17 an elderly person or a person with a disability that involves  
18 the taking or loss of property valued at more than \$5,000, a  
19 prosecuting attorney may file a petition with the circuit court  
20 of the county in which the defendant has been charged to freeze  
21 the assets of the defendant in an amount equal to but not  
22 greater than the alleged value of lost or stolen property in  
23 the defendant's pending criminal proceeding for purposes of  
24 restitution to the victim. The burden of proof required to  
25 freeze the defendant's assets shall be by a preponderance of  
26 the evidence.

1 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;  
2 97-865, eff. 1-1-13.)".