



Rep. Thomas Bennett

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LRB099 06361 RLC 33869 a

1 AMENDMENT TO HOUSE BILL 1588

2 AMENDMENT NO. _____. Amend House Bill 1588 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by
5 changing 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.

1 (b) Sentence. Financial exploitation of an elderly person
2 or a person with a disability is: (1) a Class 4 felony if the
3 value of the property is \$300 or less, (2) a Class 3 felony if
4 the value of the property is more than \$300 but less than
5 \$5,000, (3) a Class 2 felony if the value of the property is
6 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony
7 if the value of the property is \$50,000 or more or if the
8 elderly person is over 70 years of age and the value of the
9 property is \$15,000 or more or if the elderly person is 80
10 years of age or older and the value of the property is \$5,000
11 or more.

12 (c) For purposes of this Section:

13 (0.05) "Economic damages" means all damages which are
14 tangible, such as damages for past and future medical
15 expenses, loss of income or earnings, and other property
16 loss.

17 (0.06) "Non-economic damages" means damages which are
18 intangible, including but not limited to damages for pain
19 and suffering, disability, disfigurement, loss of
20 consortium, and loss of society.

21 (1) "Elderly person" means a person 60 years of age or
22 older.

23 (2) "Person with a disability" means a person who
24 suffers from a physical or mental impairment resulting from
25 disease, injury, functional disorder or congenital
26 condition that impairs the individual's mental or physical

1 ability to independently manage his or her property or
2 financial resources, or both.

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

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

19 (5) "Financial abuse" means:

20 (A) wrongfully taking or appropriating money or
21 property of an elderly person or person with a
22 disability, without regard to whether the person
23 taking or appropriating the money or property has a
24 fiduciary relationship with the elderly person or a
25 person with a disability; or

26 (B) when an elderly person or a person with a

1 disability requests that another person transfer to
2 the elderly person or a person with a disability any
3 money or property that the other person holds or
4 controls and that belongs to or is held in express
5 trust, constructive trust, or resulting trust for the
6 elderly person or a person with a disability, and the
7 other person, without good cause, either continues to
8 hold the money or property or fails to take reasonable
9 steps to make the money or property readily available
10 to the elderly person or a person with a disability
11 when:

12 (i) the ownership or control of the money or
13 property was acquired in whole or in part by the
14 other person or someone acting in concert with the
15 other person from the elderly person or a person
16 with a disability; and

17 (ii) the other person acts in bad faith, or
18 knew or should have known of the right of the
19 elderly person or a person with a disability to
20 have the money or property transferred as
21 requested or otherwise made available to the
22 elderly person or a person with a disability.

23 A transfer of money or property that is made for the
24 purpose of qualifying an elderly person or a person with a
25 disability for Medicaid benefits or for any other State or
26 federal assistance program, or the holding and exercise of

1 control over money or property after the transfer, does not
2 constitute a wrongful taking or appropriation under
3 subparagraph (A) of this paragraph (5) or the holding of
4 money or property without good cause for the purposes of
5 subparagraph (B) of this paragraph (5).

6 (6) "Physical abuse" means any of the following acts
7 committed against an elderly person or a person with a
8 disability:

9 (A) assault;

10 (B) battery;

11 (C) aggravated assault;

12 (D) aggravated battery;

13 (E) criminal sexual assault;

14 (F) aggravated criminal sexual assault;

15 (G) criminal sexual abuse;

16 (H) aggravated criminal sexual abuse;

17 (I) intimidation; or

18 (J) criminal abuse or neglect of an elderly person

19 or person with a disability.

20 The illegal use of the assets or resources of an elderly
21 person or a person with a disability includes, but is not
22 limited to, the misappropriation of those assets or resources
23 by undue influence, breach of a fiduciary relationship, fraud,
24 deception, extortion, or use of the assets or resources
25 contrary to law.

26 A person stands in a position of trust and confidence with

1 an elderly person or person with a disability when he (i) is a
2 parent, spouse, adult child or other relative by blood or
3 marriage of the elderly person or person with a disability,
4 (ii) is a joint tenant or tenant in common with the elderly
5 person or person with a disability, (iii) has a legal or
6 fiduciary relationship with the elderly person or person with a
7 disability, (iv) is a financial planning or investment
8 professional, or (v) is a paid or unpaid caregiver for the
9 elderly person or person with a disability.

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

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

19 (f) Not a defense. It shall not be a defense to financial
20 exploitation of an elderly person or person with a disability
21 that the accused reasonably believed that the victim was not an
22 elderly person or person with a disability.

23 (g) Civil Liability.

24 (1) An elderly person or a person with a disability who
25 suffers injury, damage, or death by reason of physical
26 abuse or financial abuse may bring an action against any

1 person who has caused the physical or financial abuse or
2 who has permitted another person to engage in physical or
3 financial abuse. The court shall award the following to a
4 plaintiff who prevails in an action under this subsection:

5 (A) an amount equal to 3 times all economic damages
6 resulting from the physical or financial abuse, or
7 \$500, whichever amount is greater;

8 (B) an amount equal to 3 times all non-economic
9 damages resulting from the physical or financial
10 abuse;

11 (C) reasonable attorney's fees incurred by the
12 plaintiff; and

13 (D) reasonable fees for the services of a guardian
14 or guardian ad litem incurred by reason of the
15 litigation of a claim brought under this subsection.

16 (2) An action may be brought under this subsection only
17 by:

18 (A) an elderly person or a person with a
19 disability;

20 (B) a guardian, conservator, or attorney-in-fact
21 for an elderly person or a person with a disability;

22 (C) a personal representative for the estate of a
23 decedent who was an elderly person or a person with a
24 disability at the time the cause of action arose; or

25 (D) a trustee for a trust on behalf of the trustor
26 or the spouse of the trustor who is an elderly person

1 or a person with a disability.

2 (3) An action may be brought under this subsection only
3 for physical abuse or for financial abuse.

4 (4) An action may be brought under this subsection
5 against a person for permitting another person to engage in
6 physical or financial abuse if the person knowingly acts or
7 fails to act under circumstances in which a reasonable
8 person should have known of the physical or financial
9 abuse.

10 (5) A person commencing an action under this subsection
11 must serve a copy of the complaint on the Attorney General
12 within 30 days after the action is commenced. A person who
13 is charged by information or indictment with the offense of
14 financial exploitation of an elderly person or person with
15 a disability and who fails or refuses to return the
16 victim's property within 60 days following a written demand
17 from the victim or the victim's legal representative shall
18 be liable to the victim or to the estate of the victim in
19 damages of treble the amount of the value of the property
20 obtained, plus reasonable attorney fees and court costs.
21 The burden of proof that the defendant unlawfully obtained
22 the victim's property shall be by a preponderance of the
23 evidence. This subsection shall be operative whether or not
24 the defendant has been convicted of the offense.

25 (h) If a person is charged with financial exploitation of
26 an elderly person or a person with a disability that involves

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

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