



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1689

by Rep. Emily McAsey

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-1.3

from Ch. 38, par. 16-1.3

Amends the Criminal Code of 1961. Provides that financial exploitation of an elderly person or a person with a disability is a Class 1 felony if the value of the property is \$50,000 (rather than \$100,000) or more but less than \$100,000 or if the elderly person is over 70 years of age and the value of the property is \$15,000 or more but less than \$50,000 or if the elderly person is 80 years of age or older and the value of the property is \$5,000 or more but less than \$25,000 and a Class X felony if the value of the property is \$100,000 or more or if the elderly person is over 70 years of age and the value of the property is \$50,000 or more or if the elderly person is 80 years of age or older and the value of the property is \$25,000 or more.

LRB097 08260 RLC 48386 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 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 offense of financial exploitation
10 of an elderly person or a person with a disability when he or
11 she stands in a position of trust or confidence with the
12 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 \$50,000, ~~\$100,000~~ and a Class 1 felony if the value of the
5 property is \$50,000 ~~\$100,000~~ or more but less than \$100,000 or
6 if the elderly person is over 70 years of age and the value of
7 the property is \$15,000 or more but less than \$50,000 or if the
8 elderly person is 80 years of age or older and the value of the
9 property is \$5,000 or more but less than \$25,000 and a Class X
10 felony if the value of the property is \$100,000 or more or if
11 the elderly person is over 70 years of age and the value of the
12 property is \$50,000 or more or if the elderly person is 80
13 years of age or older and the value of the property is \$25,000
14 or more.

15 (b) For purposes of this Section:

16 (1) "Elderly person" means a person 60 years of age or
17 older.

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

24 (3) "Intimidation" means the communication to an
25 elderly person or a person with a disability that he or she
26 shall be deprived of food and nutrition, shelter,

1 prescribed medication or medical care and treatment.

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

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

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

25 (e) Nothing in this Section shall be construed to impose
26 criminal liability on a person who has made a good faith effort

1 to assist the elderly person or person with a disability in the
2 management of his or her property, but through no fault of his
3 or her own has been unable to provide such assistance.

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

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

21 (Source: P.A. 95-798, eff. 1-1-09.)