



Rep. Mike Smiddy

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09800HB2749ham002

LRB098 08176 RLC 42771 a

1 AMENDMENT TO HOUSE BILL 2749

2 AMENDMENT NO. _____. Amend House Bill 2749 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 (1) "Elderly person" means a person 60 years of age or
14 older.

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

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

26 (4) "Deception" means, in addition to its meaning as

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

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, or failure to timely remit payment for bills,
17 invoices, or accounts that the elderly person or a person with
18 a disability is obligated to pay from the elderly person's or a
19 person with a disability's assets or resources within the
20 required period of time placing the elderly person or a person
21 with a disability at risk of eviction, involuntary discharge,
22 involuntary transfer, or loss of needed services.

23 A person stands in a position of trust and confidence with
24 an elderly person or person with a disability when he (i) is a
25 parent, spouse, adult child or other relative by blood or
26 marriage of the elderly person or person with a disability,

1 (ii) is a joint tenant or tenant in common with the elderly
2 person or person with a disability, (iii) has a legal or
3 fiduciary relationship with the elderly person or person with a
4 disability, (iv) is a financial planning or investment
5 professional, or (v) is a paid or unpaid caregiver for the
6 elderly person or person with a disability.

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

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

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

20 (g) Civil Liability. A person who is charged by information
21 or indictment with the offense of financial exploitation of an
22 elderly person or person with a disability and who fails or
23 refuses to return the victim's property within 60 days
24 following a written demand from the victim or the victim's
25 legal representative shall be liable to the victim or to the
26 estate of the victim in damages of treble the amount of the

1 value of the property obtained, plus reasonable attorney fees
2 and court costs. The burden of proof that the defendant
3 unlawfully obtained the victim's property shall be by a
4 preponderance of the evidence. This subsection shall be
5 operative whether or not the defendant has been convicted of
6 the offense.

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

18 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
19 97-865, eff. 1-1-13.)".