



Rep. Thomas Bennett

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LRB099 06361 RLC 34515 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 (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 (5) "Financial abuse" means:

12 (A) wrongfully taking or appropriating money or
13 property of an elderly person or person with a
14 disability, without regard to whether the person
15 taking or appropriating the money or property has a
16 fiduciary relationship with the elderly person or a
17 person with a disability; or

18 (B) when an elderly person or a person with a
19 disability requests that another person transfer to
20 the elderly person or a person with a disability any
21 money or property that the other person holds or
22 controls and that belongs to or is held in express
23 trust, constructive trust, or resulting trust for the
24 elderly person or a person with a disability, and the
25 other person, without good cause, either continues to
26 hold the money or property or fails to take reasonable

1 steps to make the money or property readily available
2 to the elderly person or a person with a disability
3 when:

4 (i) the ownership or control of the money or
5 property was acquired in whole or in part by the
6 other person or someone acting in concert with the
7 other person from the elderly person or a person
8 with a disability; and

9 (ii) the other person acts in bad faith, or
10 knew or should have known of the right of the
11 elderly person or a person with a disability to
12 have the money or property transferred as
13 requested or otherwise made available to the
14 elderly person or a person with a disability.

15 A transfer of money or property that is made for the
16 purpose of qualifying an elderly person or a person with a
17 disability for Medicaid benefits or for any other State or
18 federal assistance program, or the holding and exercise of
19 control over money or property after the transfer, does not
20 constitute a wrongful taking or appropriation under
21 subparagraph (A) of this paragraph (5) or the holding of
22 money or property without good cause for the purposes of
23 subparagraph (B) of this paragraph (5).

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

- 1 (A) assault;
2 (B) battery;
3 (C) aggravated assault;
4 (D) aggravated battery;
5 (E) criminal sexual assault;
6 (F) aggravated criminal sexual assault;
7 (G) criminal sexual abuse;
8 (H) aggravated criminal sexual abuse;
9 (I) intimidation; or
10 (J) criminal abuse or neglect of an elderly person
11 or person with a disability.

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

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

1 elderly person or person with a disability.

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

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

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

15 (g) Civil Liability.

16 (1) An elderly person or a person with a disability who
17 suffers injury, damage, or death by reason of physical
18 abuse or financial abuse may bring an action against any
19 person who has caused the physical or financial abuse. The
20 court shall award the following to a plaintiff who prevails
21 in an action under this subsection:

22 (A) an amount equal to 3 times all economic damages
23 resulting from the physical or financial abuse, or
24 \$500, whichever amount is greater;

25 (B) an amount equal to 3 times all non-economic
26 damages resulting from the physical or financial

1 abuse;

2 (C) reasonable attorney's fees incurred by the
3 plaintiff; and

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

7 (2) An action may be brought under this subsection only
8 by:

9 (A) an elderly person or a person with a
10 disability;

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

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

16 (D) a trustee for a trust on behalf of the trustor
17 or the spouse of the trustor who is an elderly person
18 or a person with a disability.

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

21 (4) A person commencing an action under this subsection
22 must serve a copy of the complaint on the Attorney General
23 within 30 days after the action is commenced. A person who
24 is charged by information or indictment with the offense of
25 financial exploitation of an elderly person or person with
26 a disability and who fails or refuses to return the

1 ~~victim's property within 60 days following a written demand~~
2 ~~from the victim or the victim's legal representative shall~~
3 ~~be liable to the victim or to the estate of the victim in~~
4 ~~damages of treble the amount of the value of the property~~
5 ~~obtained, plus reasonable attorney fees and court costs.~~
6 ~~The burden of proof that the defendant unlawfully obtained~~
7 ~~the victim's property shall be by a preponderance of the~~
8 ~~evidence. This subsection shall be operative whether or not~~
9 ~~the defendant has been convicted of the offense.~~

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

21 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
22 97-865, eff. 1-1-13.)".