



Sen. Jason A. Barickman

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09900HB1588sam001

LRB099 06361 RLC 35370 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 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.

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

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

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

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

14 (g) Civil Liability. A civil cause of action exists for
15 financial exploitation of an elderly person or a person with a
16 disability as described in subsection (a) of this Section. A
17 person against whom a civil judgment has been entered for ~~who~~
18 ~~is charged by information or indictment with the offense of~~
19 financial exploitation of an elderly person or person with a
20 disability ~~and who fails or refuses to return the victim's~~
21 ~~property within 60 days following a written demand from the~~
22 ~~victim or the victim's legal representative~~ shall be liable to
23 the victim or to the estate of the victim in damages of treble
24 the amount of the value of the property obtained, plus
25 reasonable attorney fees and court costs. In a civil action
26 under this subsection, the ~~The~~ burden of proof that the

1 defendant committed financial exploitation of an elderly
2 person or a person with a disability as described in subsection
3 (a) of this Section ~~unlawfully obtained the victim's property~~
4 shall be by a preponderance of the evidence. This subsection
5 shall be operative whether or not the defendant has been
6 charged or convicted of the criminal offense as described in
7 subsection (a) of this Section. This subsection (g) shall not
8 limit or affect the right of any person to bring any cause of
9 action or seek any remedy available under the common law, or
10 other applicable law, arising out of the financial exploitation
11 of an elderly person or a person with a disability.

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

23 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;
24 97-865, eff. 1-1-13.)".