

SECOND REGULAR SESSION

# HOUSE BILL NO. 1212

## 93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (158).

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STEPHEN S. DAVIS, Chief Clerk

3120L.011

### AN ACT

To repeal sections 192.925 and 565.188, RSMo, and to enact in lieu thereof seven new sections relating to financial exploitation of the elderly and disabled, with a penalty provision.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 192.925 and 565.188, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 192.925, 442.700, 442.703, 442.706, 442.709, 442.712, and 565.188, to read as follows:

192.925. 1. To increase public awareness of the problem of elder abuse and neglect **and financial exploitation of the elderly**, the department of health and senior services shall implement an education and awareness program. Such program shall have the goal of reducing the incidences of elder abuse and neglect **and financial exploitation of the elderly**, and may focus on:

(1) The education and awareness of mandatory reporters on their responsibility to report elder abuse and neglect **and financial exploitation of the elderly**;

(2) Targeted education and awareness for the public on the problem, identification and reporting of elder abuse and neglect **and financial exploitation of the elderly**;

(3) Publicizing the elder abuse and neglect hot line telephone number;

(4) Education and awareness for law enforcement agencies and prosecutors on the problem and identification of elder abuse and neglect **and financial exploitation of the elderly**, and the importance of prosecuting cases pursuant to chapter 565, RSMo; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (5) Publicizing the availability of background checks prior to hiring an individual for  
15 caregiving purposes.

16 2. The department of social services and facilities licensed pursuant to chapters 197 and  
17 198, RSMo, shall cooperate fully with the department of health and senior services in the  
18 distribution of information pursuant to this program.

442.700. As used in sections 442.700 to 442.712, unless the context clearly otherwise indicates,  
2 the following terms shall mean:

3 (1) "Dependent", with respect to an elderly or disabled person, wholly or partially  
4 dependent upon one or more persons for care or support, either emotional or physical, because  
5 the elderly person or disabled person:

6 (a) Suffers from a significant limitation in mobility, vision, hearing, emotional or mental  
7 functioning, or the ability to read or write; or

8 (b) Is suffering or recovering from a major illness or is facing or recovering from major  
9 surgery;

10 (2) "Disabled person", the same meaning as such term is defined in section 570.145,  
11 RSMo;

12 (3) "Elderly person", the same meaning as such term is defined in section 570.145,  
13 RSMo;

14 (4) "Independent counsel", an attorney retained by the elderly or disabled person to  
15 represent only such person's interests in the transfer;

16 (5) "Less than full consideration", with respect to a transfer of property, the transferee  
17 pays less than fair market value for the property or the transfer is supported by past  
18 consideration;

19 (6) "Major transfer of personal property or money", a transfer of money or items of  
20 personal property which represent ten percent or more of the elderly or disabled person's estate;

21 (7) "Transfer", does not include testamentary transfers which are outside the scope of  
22 sections 442.700 to 442.712.

442.703. 1. In any transfer of real property or major transfer of personal property or  
2 money for less than full consideration or execution of a guaranty by an elderly or disabled person  
3 who is dependent on others to another person with whom the elderly or disabled person has a  
4 confidential or fiduciary relationship, it is presumed that the transfer or execution was the result  
5 of undue influence, unless the elderly or disabled person was represented in the transfer or  
6 execution by independent counsel. When the elderly or disabled person successfully raises the  
7 presumption of undue influence by a preponderance of the evidence and when the transferee or  
8 person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly

9 or disabled person is entitled to avoid the transfer or execution and entitled to the relief set forth  
10 in section 442.709.

11 2. For purposes of this section, the transfer of property or execution of a guaranty is  
12 deemed to have been made in the context of a confidential or fiduciary relationship if the  
13 transferee or person who benefits from the execution of a guaranty had a close relationship with  
14 the elderly or disabled person prior to the transfer or execution. Confidential or fiduciary  
15 relationships include, but are not limited to, the following:

16 (1) A family relationship between the elderly or disabled person and the transferee or  
17 person who benefits from the execution of a guaranty, including relationships by marriage and  
18 adoption;

19 (2) A fiduciary relationship between the elderly or disabled person and the transferee or  
20 person who benefits from the execution of a guaranty, such as with a guardian, conservator,  
21 trustee, accountant, broker, or financial advisor;

22 (3) A relationship between the elderly or disabled person and a physician, nurse, or other  
23 medical or health care provider;

24 (4) A relationship between the elderly or disabled person and a psychologist, psychiatrist,  
25 social worker, or counselor;

26 (5) A relationship between the elderly or disabled person and an attorney;

27 (6) A relationship between the elderly or disabled person and a priest, minister, rabbi,  
28 or spiritual advisor;

29 (7) A relationship between the elderly or disabled person and an individual who provides  
30 care or services to such person whether or not care or services are paid for the elderly or disabled  
31 person;

32 (8) A relationship between the elderly or disabled person and a friend or neighbor; or

33 (9) A relationship between the elderly or disabled person and an individual sharing the  
34 same living quarters.

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36 When any such relationships exist and when a transfer or execution is made to a corporation or  
37 organization primarily on account of the membership, ownership, or employment interest or for  
38 the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the  
39 corporation or organization is deemed to exist.

442.706. 1. A civil action may be brought to obtain relief under sections 442.700 to  
2 442.712 by an elderly or disabled person, such person's legal representative, or the personal  
3 representative of the estate of an elderly or disabled person.

4 2. When a court finds that a transfer of property or execution of a guaranty was the result  
5 of undue influence, the court shall grant appropriate relief enabling the elderly or disabled person

6 to avoid the transfer or execution, including the rescission or reformation of a deed or other  
7 instrument, the imposition of a constructive trust on property, or an order enjoining use of or  
8 entry on property, or commanding the return of property. When the court finds that undue  
9 influence is a good and valid defense to a transferee's suit on a contract to transfer the property  
10 or a suit of a person who benefits from the execution of a guaranty on such guaranty, the court  
11 shall refuse to enforce the transfer or guaranty.

12 3. No relief obtained or granted under this section may in any way affect or limit the  
13 right, title, and interest of good faith purchasers, mortgages, holders of security interests, or other  
14 third parties who obtain an interest in the transferred property for value after its transfer from the  
15 elderly or disabled person. No relief obtained or granted under this section shall affect any  
16 mortgage deed to the extent of value given by the mortgagee.

442.709. Nothing in sections 442.700 to 442.712 shall be construed to abrogate any other  
2 causes of action or relief at law or equity to which elderly or disabled persons are entitled under  
3 laws or at common law.

442.712. Sections 442.700 to 442.712 shall not require that language showing  
2 compliance with sections 442.700 to 442.712 be included in a deed and shall not require that  
3 evidence of compliance with sections 442.700 to 442.712 be recorded in the registry of deeds.  
4 Any attempt to record such evidence is void and has no effect on title.

565.188. 1. When any adult day care worker; chiropractor; Christian Science  
2 practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental  
3 health, or health and senior services; employee of a local area agency on aging or an organized  
4 area agency on aging program; funeral director; home health agency or home health agency  
5 employee; hospital and clinic personnel engaged in examination, care, or treatment of persons;  
6 in-home services owner, provider, operator, or employee; law enforcement officer; long-term  
7 care facility administrator or employee; medical examiner; medical resident or intern; mental  
8 health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner;  
9 peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist;  
10 probation or parole officer; psychologist; social worker; or other person with responsibility for  
11 the care of a person sixty years of age or older has reasonable cause to suspect that such a person  
12 has been subjected to abuse or neglect, **or financial exploitation**, or observes such a person  
13 being subjected to conditions or circumstances which would reasonably result in abuse or  
14 neglect, **or financial exploitation**, he or she shall immediately report or cause a report to be  
15 made to the department in accordance with the provisions of sections 660.250 to 660.295,  
16 RSMo. Any other person who becomes aware of circumstances which may reasonably be  
17 expected to be the result of or result in abuse or neglect, **or financial exploitation** may report  
18 to the department.

19           2. Any person who knowingly fails to make a report as required in subsection 1 of this  
20 section is guilty of a class A misdemeanor.

21           3. Any person who purposely files a false report of elder abuse or neglect **or financial**  
22 **exploitation of the elderly** is guilty of a class A misdemeanor.

23           4. Every person who has been previously convicted of or pled guilty to making a false  
24 report to the department and who is subsequently convicted of making a false report under  
25 subsection 3 of this section is guilty of a class D felony.

26           5. Evidence of prior convictions of false reporting shall be heard by the court, out of the  
27 hearing of the jury, prior to the submission of the case to the jury, and the court shall determine  
the existence of the prior convictions.

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