

SECOND REGULAR SESSION

HOUSE BILL NO. 1451

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

3727H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 565.184 and 570.145, RSMo, and to enact in lieu thereof two new sections relating to offenses against certain persons, with penalty provisions.

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

Section A. Sections 565.184 and 570.145, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 565.184 and 570.145, to read as follows:

565.184. 1. A person commits the offense of abuse of an elderly person, a person with a disability, or a vulnerable person if he or she:

(1) Purposely engages in conduct involving more than one incident that causes emotional distress to an elderly person, a person with a disability, or a vulnerable person. The course of conduct shall be such as would cause a reasonable elderly person, person with a disability, or vulnerable person to suffer substantial emotional distress; or

(2) Intentionally fails to provide care, goods or services to an elderly person, a person with a disability, or a vulnerable person. The result of the conduct shall be such as would cause a reasonable elderly person, person with a disability, or vulnerable person to suffer physical or emotional distress; or

(3) Knowingly **or negligently** acts, or knowingly **or negligently** fails to act, in a manner which results in a substantial risk to the life, body or health of an elderly person, a person with a disability, or a vulnerable person.

2. The offense of abuse of an elderly person, a person with a disability, or a vulnerable person is a class ~~[A misdemeanor]~~ **D felony**. Nothing in this section shall be construed to mean that an elderly person, a person with a disability, or a vulnerable person is abused solely because such person chooses to rely on spiritual means through prayer, in lieu of medical care, for his or

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.

18 her health care, as evidence by such person's explicit consent, advance directive for health care,
19 or practice.

570.145. 1. A person commits the offense of financial exploitation of an elderly person
2 or a person with a disability if such person knowingly obtains control over the property of the
3 elderly person or person with a disability with the intent to permanently deprive the person of
4 the use, benefit or possession of his or her property thereby benefitting the offender or
5 detrimentally affecting the elderly person or person with a disability by:

6 (1) Deceit;

7 (2) Coercion;

8 (3) Creating or confirming another person's impression which is false and which the
9 offender does not believe to be true;

10 (4) Failing to correct a false impression which the offender previously has created or
11 confirmed;

12 (5) Preventing another person from acquiring information pertinent to the disposition of
13 the property involved;

14 (6) Selling or otherwise transferring or encumbering property, failing to disclose a lien,
15 adverse claim or other legal impediment to the enjoyment of the property, whether such
16 impediment is or is not valid, or is or is not a matter of official record;

17 (7) Promising performance which the offender does not intend to perform or knows will
18 not be performed. Failure to perform standing alone is not sufficient evidence to prove that the
19 offender did not intend to perform; or

20 (8) Undue influence, which means the use of influence by someone who exercises
21 authority over an elderly person or person with a disability in order to take unfair advantage of
22 that person's vulnerable state of mind, neediness, pain, or agony. Undue influence includes, but
23 is not limited to, the improper or fraudulent use of a power of attorney, guardianship,
24 conservatorship, or other fiduciary authority.

25 2. The offense of financial exploitation of an elderly person or person with a disability
26 is a class ~~[A misdemeanor]~~ **E felony** unless:

27 (1) ~~[The value of the property is fifty dollars or more, in which case it is a class E felony;~~

28 ~~———(2)]~~ The value of the property is ~~[seven hundred fifty]~~ **five hundred** dollars or more, in
29 which case it is a class D felony;

30 ~~[(3)]~~ (2) The value of the property is ~~[five]~~ **two thousand five hundred** dollars or more,
31 in which case it is a class C felony;

32 ~~[(4)]~~ (3) The value of the property is twenty-five thousand dollars or more, in which case
33 it is a class B felony; or

34 ~~[(5)]~~ (4) The value of the property is seventy-five thousand dollars or more, in which
35 case it is a class A felony.

36 3. Nothing in this section shall be construed to limit the remedies available to the victim
37 pursuant to any state law relating to domestic violence.

38 4. Nothing in this section shall be construed to impose criminal liability on a person who
39 has made a good faith effort to assist the elderly person or person with a disability in the
40 management of his or her property, but through no fault of his or her own has been unable to
41 provide such assistance.

42 5. Nothing in this section shall limit the ability to engage in bona fide estate planning,
43 to transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that
44 such actions do not adversely impact the standard of living to which the elderly person or person
45 with a disability has become accustomed at the time of such actions.

46 6. It shall not be a defense to financial exploitation of an elderly person or person with
47 a disability that the accused reasonably believed that the victim was not an elderly person or
48 person with a disability.

49 7. (1) It shall be unlawful in violation of this section for any person receiving or in the
50 possession of funds of a Medicaid-eligible elderly person or person with a disability residing in
51 a facility licensed under chapter 198 to fail to remit to the facility in which the Medicaid-eligible
52 person resides all money owing the facility resident from any source, including, but not limited
53 to, Social Security, railroad retirement, or payments from any other source disclosed as resident
54 income contained in the records of the department of social services, family support division or
55 its successor. The department of social services, family support division or its successor is
56 authorized to release information from its records containing the resident's income or assets to
57 any prosecuting or circuit attorney in the state of Missouri for purposes of investigating or
58 prosecuting any suspected violation of this section.

59 (2) The prosecuting or circuit attorney of any county containing a facility licensed under
60 chapter 198, who successfully prosecutes a violation of the provisions of this subsection, may
61 request the circuit court of the county in which the offender admits to or is found guilty of a
62 violation, as a condition of sentence and/or probation, to order restitution of all amounts
63 unlawfully withheld from a facility in his or her county. Any order of restitution entered by the
64 court or by agreement shall provide that ten percent of any restitution installment or payment
65 paid by or on behalf of the defendant or defendants shall be paid to the prosecuting or circuit
66 attorney of the county successfully prosecuting the violation to compensate for the cost of
67 prosecution with the remaining amount to be paid to the facility.

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