

FIRST REGULAR SESSION

SENATE BILL NO. 442

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1816S.011

AN ACT

To repeal section 570.145, RSMo, and to enact in lieu thereof one new section relating to financial exploitation of the elderly, with penalty provisions.

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

Section A. Section 570.145, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 570.145, to read as follows:

570.145. 1. A person commits the crime of financial exploitation of an elderly or disabled person if such person knowingly and by deception, intimidation, or force obtains control over the elderly or disabled person's property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby benefiting such person or detrimentally affecting the elderly or disabled person. Financial exploitation of an elderly or disabled person is a class A misdemeanor if the value of the property is less than fifty dollars, a class D felony if the value of the property is fifty dollars but less than five hundred dollars, a class C felony if the value of the property is five hundred dollars but less than one thousand dollars, [and] a class B felony if the value of the property is one thousand dollars [or more] **but less than fifty thousand dollars, and a class A felony if the value of the property is fifty thousand dollars or more.**

2. For purposes of this section, the following terms mean:

(1) "Deception", a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly or disabled person or to the existing or preexisting condition of any of the property

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

involved in such contract or agreement, or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit the elderly or disabled person to enter into a contract or agreement. Deception includes:

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

(b) Failure to correct a false impression which the offender previously has created or confirmed; or

(c) Preventing another person from acquiring information pertinent to the disposition of the property involved; or

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

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

(2) "Disabled person", [a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of avoiding or preventing the commission of an offense] **a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection;**

(3) "Elderly person", a person sixty years of age or older [who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense];

(4) "Intimidation", **a threat of physical or emotional harm to an elderly or disabled person, or** the communication to an elderly or disabled person that he or she will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

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

4. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly or disabled person in the management of his or her property, but through no fault of his or

her own has been unable to provide such assistance.

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

6. It shall not be a defense to financial exploitation of an elderly or disabled person that the accused reasonably believed that the victim was not an elderly or disabled person.

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