

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 399** Session of  
2019

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INTRODUCED BY SCHLEGEL CULVER, MASSER, DAY, KLUNK, STEPHENS,  
MURT, HAHN, B. MILLER, GLEIM, RYAN, KAUFFMAN, DAVIDSON,  
MILLARD, PICKETT, DeLUCA, BERNSTINE, NEILSON, DUSH, IRVIN,  
COX, BROWN AND GILLEN, MAY 2, 2019

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REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
MAY 2, 2019

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## AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in theft and related offenses,  
3 providing for the offense of financial exploitation of  
4 elderly or care-dependent person.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 3922.1. Financial exploitation of elderly or care-dependent  
10 person.

11 (a) Offense defined.--A person commits the offense of  
12 financial exploitation of an elderly or care-dependent person if  
13 the person obtains control over the property of an elderly or  
14 care-dependent person and intentionally deprives the elderly or  
15 care-dependent person of the property.

16 (b) Grading.--Financial exploitation of an elderly or care-  
17 dependent person constitutes a:

1 (1) Felony of the first degree if:

2 (i) the amount involved is at least \$500,000;

3 (ii) the person obtained control over the property  
4 of an elderly or care-dependent person through deception,  
5 intimidation or force;

6 (iii) the property was taken or used while the  
7 person was acting in a fiduciary capacity, including as a  
8 power of attorney, regardless of the amount taken or used  
9 from the elderly or care-dependent person; or

10 (iv) the person participated in a course of conduct  
11 resulting in the loss of property to at least 10 elderly  
12 or care-dependent persons, regardless of the amount taken  
13 or used from each victim.

14 (2) Felony of the second degree if the amount involved  
15 is at least \$100,000 but less than \$500,000.

16 (3) Felony of the third degree if the amount involved  
17 exceeds \$2,000 but is less than \$100,000.

18 (4) Except for offenses under paragraphs (1), (2) and  
19 (3), misdemeanor of the first degree.

20 (c) Presumptions.--A person acting under a power of attorney  
21 for an elderly or care-dependent person is presumed to  
22 understand the legal obligations under 20 Pa.C.S. Ch. 56  
23 (relating to powers of attorney).

24 (d) Concurrent jurisdiction to prosecute.--In addition to  
25 the authority conferred upon the Attorney General by the act of  
26 October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
27 Attorneys Act, the Attorney General may investigate and  
28 institute criminal proceedings for any violation of this section  
29 or related offenses. No person charged with a violation of this  
30 section by the Attorney General may challenge the authority of

1 the Attorney General to investigate or prosecute the case, and,  
2 if a challenge is made, the challenge shall be dismissed, and no  
3 relief shall be made available in the courts of this  
4 Commonwealth to the person making the challenge.

5 (e) Venue.--An offense committed under subsection (a) shall  
6 be deemed to have been committed in any of the following:

7 (1) the residence of the elderly person or care-  
8 dependent person; or

9 (2) the place where the defendant possessed, used or  
10 accessed the elderly person's property or care-dependent  
11 person's property.

12 (f) Preliminary hearing.--

13 (1) Pursuant to Pa.R.Crim.P. No. 542 (relating to  
14 preliminary hearing; continuances), hearsay evidence shall be  
15 admissible at a preliminary hearing on a violation of  
16 subsection (a).

17 (2) A law enforcement officer may testify as to the  
18 statement of the elderly or care-dependent person to  
19 establish an element of the offense, including, but not  
20 limited to, proof of ownership of, nonpermitted use of,  
21 damage to or value of property.

22 (g) Preservation of assets for restitution.--

23 (1) Notwithstanding the provisions of 42 Pa.C.S. §  
24 9728(e)(2)(i)(B) (relating to collection of restitution,  
25 reparation, fees, costs, fines and penalties), and upon the  
26 filing of a criminal complaint, information or indictment of  
27 a person charged under subsection (a), the prosecuting  
28 attorney may file a petition with the court of common pleas  
29 in the county in which the defendant has been charged to  
30 preserve the assets of the defendant, in an amount equal to

1 the alleged value of the stolen property for purposes of  
2 restitution for the victim.

3 (2) The provisions of 42 Pa.C.S. § 9728(e)(1) and (2)(i)  
4 (A), (C) and (D) and (ii) and (f) shall apply to this  
5 section.

6 (h) Forfeiture.--

7 (1) Pursuant to 42 Pa.C.S. Ch. 68 (relating to  
8 forfeitures), property or proceeds obtained by a person in  
9 violation of subsection (a) or used in the commission of an  
10 offense under subsection (a) shall be subject to forfeiture  
11 to the Commonwealth and no property right shall exist in the  
12 property or proceeds. Property or proceeds shall include:

13 (i) A conveyance of a vehicle used or intended for  
14 use in violation of subsection (a).

15 (ii) A computer or other electronic equipment or  
16 device used or intended for use in a violation of  
17 subsection (a).

18 (iii) A piece of property or item of value obtained  
19 using money received as a result of a violation of  
20 subsection (a).

21 (2) Except as provided in paragraph (3), proceedings for  
22 the seizure, forfeiture and disposal of forfeited property  
23 shall be subject to 42 Pa.C.S. Ch. 68.

24 (3) The net proceeds, as determined by the district  
25 attorney or the Attorney General having custody, shall first  
26 be used to satisfy a restitution order imposed by the court.  
27 Any remaining proceeds shall be used for the investigation  
28 and prosecution of violations of subsection (a).

29 (i) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:

2 "Care-dependent person." An adult who, due to physical or  
3 cognitive disability or impairment, requires assistance to meet  
4 needs for food, shelter, clothing, personal care or health care.

5 "Elderly." A person who is at least 60 years of age.

6 "Property." Anything of value, including real estate,  
7 tangible and intangible personal property, contract rights,  
8 money, bank accounts, investment accounts, stocks, bonds,  
9 retirement accounts, or any other deposit of money or medium of  
10 savings or collective investment or other interests in or claims  
11 to wealth.

12 Section 2. This act shall take effect in 60 days.