

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1429 Session of 2021

INTRODUCED BY SCHLEGEL CULVER, MASSER, DAY, KLUNK, PICKETT, RYAN, DAVANZO, HILL-EVANS, LEWIS DELROSSO, BROOKS, R. BROWN, THOMAS, MILLARD, FEE, NEILSON, T. DAVIS AND MOUL, MAY 17, 2021

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 7, 2021

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 an
4 older adult 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 an older adult or care-
10 dependent person.

11 (a) Offense defined.--A person in a position of trust who
12 commits the offense of financial exploitation of an older adult
13 or care-dependent person shall be subject to the criminal
14 penalties specified under subsection (b).

15 (b) Grading.--Financial exploitation of an older adult or
16 care-dependent person constitutes a:

17 (1) Felony of the first degree if:

1 (i) the amount involved is at least \$500,000; and
2 (ii) the person participated in a course of conduct
3 resulting in the loss of property of two or more older
4 adults or care-dependent persons.

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

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

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

11 (c) Presumptions.--A person acting under a power of attorney
12 for an older adult or care-dependent person is presumed to
13 understand the legal obligations under 20 Pa.C.S. Ch. 56
14 (relating to powers of attorney).

15 (d) Concurrent jurisdiction to prosecute.--In addition to
16 the authority conferred upon the Attorney General by the act of
17 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
18 Attorneys Act, the Attorney General may investigate and
19 institute criminal proceedings for any violation of this section
20 or related offenses if the amount involved exceeds \$20,000. No
21 person charged with a violation of this section by the Attorney
22 General may challenge the authority of the Attorney General to
23 investigate or prosecute the case, and, if a challenge is made,
24 the challenge shall be dismissed, and no relief shall be made
25 available in the courts of this Commonwealth to the person
26 making the challenge.

27 (e) Enforcement.--The district attorney of a county shall
28 have the authority to investigate and institute criminal
29 proceedings for any violation of this section or related
30 offenses.

1 (f) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection unless the context clearly indicates otherwise:

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

7 "Course of conduct." A pattern of actions composed of more
8 than one act over a period of time, however short, evidencing a
9 continuity of conduct.

10 ~~"Financial exploitation." The wrongful or unauthorized~~ <--
11 ~~taking or attempt to take by withholding, appropriation,~~
12 ~~concealment or use of money, assets or property of an older~~
13 ~~adult or care dependent person, including any act or omission~~
14 ~~taken by a person through the power of attorney, guardianship,~~
15 ~~custodianship or conservatorship, as a trustee or personal~~
16 ~~representative or via a business transaction. The term includes~~
17 ~~any of the following actions:~~

18 ~~(1) Obtaining or attempting to obtain control through~~
19 ~~deception, intimidation or undue influence of the money,~~
20 ~~assets or property of an older adult or care dependent person~~
21 ~~to deprive the older adult or care dependent person of the~~
22 ~~ownership, use, benefit or possession of the money, assets or~~
23 ~~property.~~

24 ~~(2) Converting or attempting to convert money, assets or~~
25 ~~property of an older adult or care dependent person to~~
26 ~~deprive the older adult or care dependent person of the~~
27 ~~ownership, use, benefit or possession of the money, assets or~~
28 ~~property.~~

29 ~~"FINANCIAL EXPLOITATION." THE WRONGFUL OR UNAUTHORIZED~~ <--
30 ~~TAKING OR ATTEMPT TO TAKE BY WITHHOLDING, APPROPRIATING,~~

1 CONCEALING OR USING THE MONEY, ASSETS OR PROPERTY OF AN OLDER
2 ADULT OR CARE-DEPENDENT PERSON, INCLUDING ANY ACT OR OMISSION
3 TAKEN BY A PERSON, INCLUDING THROUGH THE USE OF A POWER OF
4 ATTORNEY, GUARDIAN, CUSTODIAN, TRUSTEE, PERSONAL REPRESENTATIVE
5 OR CONSERVATOR OF AN OLDER ADULT OR CARE-DEPENDENT PERSON OR BY
6 AN INDIVIDUAL WHO STANDS IN A POSITION OF TRUST AND CONFIDENCE
7 WITH AN OLDER ADULT OR CARE-DEPENDENT PERSON, INCLUDING BUSINESS
8 TRANSACTIONS TO:

9 (1) OBTAIN OR ATTEMPT TO OBTAIN CONTROL, THROUGH
10 DECEPTION, INTIMIDATION OR UNDUE INFLUENCE, OVER THE OLDER
11 ADULT'S OR CARE-DEPENDENT PERSON'S MONEY, ASSETS OR PROPERTY
12 TO DEPRIVE THE OLDER ADULT OR CARE-DEPENDENT PERSON OF THE
13 OWNERSHIP, USE, BENEFIT OR POSSESSION OF THE OLDER ADULT'S OR
14 CARE-DEPENDENT PERSON'S MONEY, ASSETS OR PROPERTY; OR

15 (2) CONVERT OR ATTEMPT TO CONVERT MONEY, ASSETS OR
16 PROPERTY OF THE OLDER ADULT OR CARE-DEPENDENT PERSON TO
17 DEPRIVE THE OLDER ADULT OR CARE-DEPENDENT PERSON OF THE
18 OWNERSHIP, USE, BENEFIT OR POSSESSION OF THE OLDER ADULT'S OR
19 CARE-DEPENDENT PERSON'S MONEY, ASSETS OR PROPERTY.

20 "Older adult." A person who is at least 60 years of age.

21 "Position of trust." A person who meets any of the following
22 criteria:

23 (1) The person is the parent, spouse, adult child or
24 other relative by blood or affinity of an older adult or
25 care-dependent person.

26 (2) The person is a joint tenant or tenant in common
27 with an older adult or care-dependent person.

28 (3) The person has a fiduciary obligation to an older
29 adult or care-dependent person, including through the power
30 of attorney, guardianship, custodianship or conservatorship

1 or as a trustee or personal representative.

2 (4) The person receives monetary or other valuable
3 consideration for providing care for an older adult or care-
4 dependent person.

5 (5) The person lives with or provides some component of
6 home care services on a continuing basis to an older adult or
7 care-dependent person, including a neighbor or friend who
8 does not provide home care services on a compensated basis
9 but has access to the older adult or care-dependent person
10 based on the relationship.

11 (6) The person is a current or former sexual or intimate
12 partner with an older adult or care-dependent person.

13 "Property." Anything of value, including real estate,
14 tangible personal property, contract rights, money, bank
15 accounts, investment accounts, stocks, bonds, retirement
16 accounts or any other deposit of money or medium of savings or
17 collective investment or other interests in or claims to wealth.

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