

726.25 Financial exploitation of an older individual.

1. For the purposes of [this section](#):

a. “*Caregiver*” means an individual who has the responsibility for the care or custody of an older individual, whether voluntarily, by contract, through employment, or as a result of the operation of law, and includes but is not limited to a family member or other individual who provides compensated or uncompensated care to an older individual.

b. “*Coercion*” means communication or conduct which compels an older individual to act or refrain from acting against the older individual’s will.

c. “*Older individual*” means an individual who is sixty years of age or older.

d. “*Stands in a position of trust or confidence*” means the person has any of the following relationships relative to the older individual:

(1) Is a relative by consanguinity or affinity of the older individual.

(2) Is a joint tenant or tenant in common with the older individual.

(3) Has a legal or fiduciary relationship with the older individual. For the purposes of this paragraph, a legal or fiduciary relationship with the older individual does not include a legal or fiduciary relationship an older individual may have with a bank incorporated under the provisions of any state or federal law, any savings and loan association or savings bank incorporated under the provisions of any state or federal law, or any credit union organized under the provisions of any state or federal law.

(4) Is a financial planning or investment professional providing or offering to provide financial planning or investment advice to the older individual.

(5) Is a beneficiary of the older individual in a governing instrument.

(6) Is a caregiver for the older individual.

(7) Is a person who has otherwise formed a relationship of trust or reliance with the older individual such that the person should reasonably expect that the older individual would likely rely upon the person to act in good faith for the older individual’s interest.

e. “*Undue influence*” means excessive persuasion by a person that causes an older individual to act or refrain from acting by overcoming an older individual’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the older individual. Evidence of vulnerability may include but is not limited to incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the person knew or should have known of the alleged older individual’s vulnerability.

(2) The person’s apparent authority. Evidence of apparent authority may include but is not limited to status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual advisor, expert, or other qualifications.

(3) The person’s actions or tactics. Evidence of actions or tactics used may include but is not limited to all of the following:

(a) Controlling necessities of life, medication, the older individual’s interactions with others, access to information, or sleep.

(b) Use of affection, intimidation, or coercion.

(c) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include but is not limited to the economic consequences to the older individual; any divergence from the older individual’s prior intent, course of conduct, or dealing; the relationship of the value conveyed to the value of any services or consideration received; or the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

2. A person commits financial exploitation of an older individual when the person stands in a position of trust or confidence with the older individual and knowingly and by undue influence, deception, coercion, fraud, breach of fiduciary duty, or extortion, obtains control

over or otherwise uses the benefits, property, resources, belongings, or assets of the older individual, to the detriment of the older individual.

3. A person who commits a first offense of financial exploitation of an older individual is guilty of the following, as applicable:

a. A serious misdemeanor if the value of the benefits, property, resources, belongings, or assets is one hundred dollars or less.

b. An aggravated misdemeanor if the value of the benefits, property, resources, belongings, or assets exceeds one hundred dollars but does not exceed one thousand dollars.

c. A class “D” felony if the value of the benefits, property, resources, belongings, or assets exceeds one thousand dollars but does not exceed ten thousand dollars.

d. A class “C” felony if the value of the benefits, property, resources, belongings, or assets exceeds ten thousand dollars but does not exceed fifty thousand dollars.

e. A class “B” felony if the value of the benefits, property, resources, belongings, or assets exceeds fifty thousand dollars, or if the older individual is seventy years of age to eighty years of age and the value of the benefits, property, resources, belongings, or assets is fifteen thousand dollars or more, or if the older individual is eighty years of age or older and the value of the benefits, property, resources, belongings, or assets is five thousand dollars or more.

4. On a second or subsequent offense of financial exploitation of an older individual, a person commits a class “C” felony if the value of the benefits, property, resources, belongings, or assets does not exceed fifty thousand dollars unless [subsection 3](#), paragraph “e”, applies.

5. Nothing in [this section](#) shall be construed to limit other remedies available to the older individual including those provided under [chapters 235F](#) and [236](#).

6. Nothing in [this section](#) shall be construed to alter the competency requirements under [section 633.264](#) relative to a will or under [section 633A.2102](#) relative to a trust.

7. Nothing in [this section](#) shall be construed to impose criminal liability on a person who has made a good-faith effort to assist an older individual regarding or in the management of the older individual’s benefits, property, resources, belongings, or assets, but who has been, in whole or in part, unable to provide such assistance. “*Management of the older individual’s benefits, property, resources, belongings, or assets*” includes estate planning when performed by an attorney licensed to practice law in this state.

8. Nothing in [this section](#) shall be construed to impose criminal liability on a person based solely on the sale of a product or service, including legal services, or on the good-faith solicitation of a bona fide charitable donation to a nonprofit organization that qualifies for tax-exempt status under the Internal Revenue Code.

9. Nothing in [this section](#) shall be construed to impose criminal liability on a person who has made a good-faith effort to assist an older individual in the management of the older individual’s benefits, property, resources, belongings, or assets when the efforts are undertaken for the preservation of the assets of the older individual or the older individual’s spouse or for the safety of the older individual or the older individual’s spouse.

10. It shall not be a defense to financial exploitation of an older individual that the alleged perpetrator did not know the age of the older individual or reasonably believed that the alleged victim was not an older individual.

11. In a criminal action in which an older individual is a victim, the state may make a motion to the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the victim, may grant a motion to advance the trial on the docket. The motion may be filed and served with the information or charges at any time.

12. a. A conviction or deferred judgment for or plea of guilty to a violation of [this section](#) which occurred more than twelve years prior to the date of the violation charged shall not be considered in determining whether the violation charged is a second or subsequent offense.

b. For the purpose of determining if a violation charged is a second or subsequent offense, deferred judgments issued pursuant to [section 907.3](#) for violations of [this section](#) or judgments or deferred judgments issued pursuant to [sections 708.2D](#) and [714.2A](#), and convictions or the equivalent of deferred judgments for violations in any other state under statutes substantially corresponding to [this section](#) shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define

offenses substantially equivalent to the offenses defined in [this section](#) and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense.

c. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

13. If a person is convicted of, receives a deferred judgment for, or pleads guilty to a violation of [this section](#), the court shall modify the no-contact order issued upon initial appearance in the manner provided in [section 664A.5](#), regardless of whether the person is placed on probation.

14. The clerk of the district court shall provide notice and copies of a judgment entered under [this section](#) to the applicable law enforcement agencies and the twenty-four-hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under [chapter 235F](#). The clerk shall provide notice and copies of modifications of the judgment in the same manner.

[2022 Acts, ch 1132, §5](#)

Referred to in [§13.2](#), [633.669](#), [633.670](#)