

Senate File 109 - Introduced

SENATE FILE 109

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A BILL FOR

1 An Act relating to abuse and financial exploitation of elders
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 235F.1, subsection 14, paragraph c, Code
2 2015, is amended to read as follows:

3 c. Is a person who is in a confidential relationship with
4 the vulnerable elder. ~~For the purposes of this paragraph "c", a~~
5 ~~confidential relationship does not include a legal, fiduciary,~~
6 ~~or ordinary commercial or transactional relationship the~~
7 ~~vulnerable elder may have with a bank incorporated under the~~
8 ~~provisions of any state or federal law, any savings and loan~~
9 ~~association or savings bank incorporated under the provisions~~
10 ~~of any state or federal law, any credit union organized under~~
11 ~~the provisions of any state or federal law, any attorney~~
12 ~~licensed to practice law in this state, or any agent, agency,~~
13 ~~or company regulated under chapter 505, 508, 515, or 543B~~ The
14 determination of the existence of a confidential relationship
15 is an issue of fact to be determined by the court based upon the
16 totality of the circumstances.

17 Sec. 2. Section 235F.1, subsection 15, Code 2015, is amended
18 to read as follows:

19 15. "Substitute petitioner" means a any of the following
20 persons who files a petition under this chapter:

21 a. A family or household member, guardian, conservator,
22 attorney in fact, or guardian ad litem for a vulnerable elder,
23 or other interested.

24 b. A person who files a petition under this chapter who
25 has a demonstrated interest in the vulnerable elder based on a
26 legal right which will be directly affected by the outcome or
27 result of the action or based on a legal liability which will
28 be directly enlarged or diminished by the outcome or result of
29 the action.

30 Sec. 3. Section 235F.2, subsection 5, unnumbered paragraph
31 1, Code 2015, is amended to read as follows:

32 If a substitute petitioner files a petition under this
33 section on behalf of a vulnerable elder, the clerk of court
34 shall provide notice of the filing to the vulnerable elder. If
35 a petition is filed under this subsection, the vulnerable elder

1 shall retain the right to all of the following:

2 Sec. 4. Section 235F.2, Code 2015, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 6. The court may, in its discretion, limit
5 the number of petitions filed and the timeframe within which
6 multiple filings of petitions may be made under this section
7 involving the same vulnerable elder.

8 Sec. 5. NEW SECTION. **726.11 Financial exploitation of an**
9 **older individual.**

10 1. A person commits financial exploitation of an older
11 individual when the person stands in a position of trust or
12 confidence with the older individual and knowingly and by undue
13 influence, deception, coercion, fraud, breach of fiduciary
14 duty, or extortion, obtains control over or otherwise uses
15 or diverts the benefits, property, resources, belongings, or
16 assets of the older individual.

17 2. A person who commits financial exploitation of an older
18 individual is guilty of the following, as applicable:

19 a. Financial exploitation in the fifth degree which is
20 a simple misdemeanor if the value of the funds, benefits,
21 property, resources, belongings, or assets is two hundred
22 dollars or less.

23 b. Financial exploitation in the fourth degree which is
24 a serious misdemeanor if the value of the funds, benefits,
25 property, resources, belongings, or assets exceeds two hundred
26 dollars but does not exceed five hundred dollars.

27 c. Financial exploitation in the third degree which is an
28 aggravated misdemeanor if the value of the funds, benefits,
29 property, resources, belongings, or assets exceeds five hundred
30 dollars but does not exceed one thousand dollars.

31 d. Financial exploitation in the second degree which is a
32 class "D" felony if the value of the funds, benefits, property,
33 resources, belongings, or assets exceeds one thousand dollars
34 but does not exceed ten thousand dollars.

35 e. Financial exploitation in the first degree which is a

1 class "C" felony if the value of the funds, benefits, property,
2 resources, belongings, or assets exceeds ten thousand dollars.

3 3. Nothing in this section shall be construed to limit other
4 remedies available to the older individual including those
5 provided under chapters 235F and 236.

6 4. A person alleged to have committed a violation under this
7 section shall be charged with the respective offense, unless
8 a charge may be brought based upon a more serious offense,
9 in which case the charge of the more serious offense shall
10 supersede the less serious charge.

11 5. Nothing in this section shall be construed to impose
12 criminal liability on a person who has made a good-faith effort
13 to assist an older individual in the management of the older
14 individual's benefits, property, resources, belongings, or
15 assets, but through no fault of the person, the person has been
16 unable to provide such assistance.

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

21 7. For the purposes of this section:

22 a. "Caretaker" means a related or nonrelated person who has
23 the responsibility for the protection, care, or custody of an
24 older individual as a result of assuming the responsibility
25 voluntarily, by contract, through employment, or by order of
26 the court. "Caretaker" does not include a caretaker as defined
27 in section 235E.1.

28 b. "Coercion" means communication or conduct which compels
29 an older individual to act or refrain from acting against the
30 older individual's will.

31 c. "Fiduciary" means a person or entity with the legal
32 responsibility to make decisions on behalf of and for the
33 benefit of an older individual and to act in good faith and
34 with fairness. "Fiduciary" includes but is not limited to an
35 attorney in fact, a guardian, or a conservator.

1 *d. "Older individual"* means a person sixty years of age or
2 older.

3 *e. "Stands in a position of trust or confidence"* means the
4 person has any of the following relationships relative to the
5 older individual:

6 (1) Is a parent, spouse, adult child, or other relative by
7 consanguinity or affinity of the older individual.

8 (2) Is a caretaker for the older individual.

9 (3) Is a person who is in a confidential relationship with
10 the older individual. The determination of the existence of a
11 confidential relationship is an issue of fact to be determined
12 by the court based upon the totality of the circumstances.

13 *f. "Undue influence"* means taking advantage of a person's
14 role, relationship, or authority to improperly change or
15 obtain control over the actions or decision making of an older
16 individual against the older individual's best interests.

17 Sec. 6. CODE EDITOR DIRECTIVES. The Code editor shall
18 revise the title of chapter 726 to read "Protection of the
19 family, dependent persons, residents of health care facilities,
20 and older individuals".

21

EXPLANATION

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill includes provisions relating to elder abuse and
25 financial exploitation. The bill eliminates a listing of
26 persons who were exempt from the confidential relationship
27 requirement in order to be considered as standing in a position
28 of trust or confidence with a vulnerable elder and thereby
29 potentially subject to an allegation of financial exploitation
30 under the elder abuse Code chapter. The bill provides instead
31 that the determination of the existence of a confidential
32 relationship is an issue of fact to be determined by the court
33 based upon the totality of the circumstances.

34 The bill redefines "substitute petitioner" by eliminating as
35 a potential substitute petitioner any other interested person,

1 and instead including a person who has a demonstrated interest
2 in the vulnerable elder.

3 The bill provides that if a substitute petitioner files
4 a petition for relief from elder abuse, the clerk of court
5 shall provide notice to the vulnerable elder. The bill also
6 authorizes the court, in its discretion, to limit the number of
7 petitions filed and the timeframe within which multiple filings
8 of petitions may be made involving the same vulnerable elder.

9 The bill establishes the crime of financial exploitation of
10 an older individual. A person commits financial exploitation
11 of an older individual when the person stands in a position of
12 trust or confidence with the older individual and knowingly
13 and by undue influence, deception, coercion, fraud, breach of
14 fiduciary duty, or extortion, obtains control over or otherwise
15 uses the benefits, property, resources, belongings, or assets
16 of the older individual. The criminal penalties range from a
17 simple misdemeanor to a class "C" felony based on the amount
18 of benefits, property, resources, belongings, or assets of the
19 older individual involved.