



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4587/1
SWB:kjf

2015 ASSEMBLY BILL 917

February 15, 2016 - Introduced by Representatives SUBECK, MEYERS, SARGENT, OHNSTAD, BERCEAU, MASON, SPREITZER, A. OTT and KERKMAN, cosponsored by Senators WIRCH, CARPENTER, MILLER, HARRIS DODD and VINEHOUT. Referred to Committee on Consumer Protection.

1 **AN ACT** *to create* 895.033 of the statutes; **relating to:** civil cause of action for
2 financial exploitation.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for financial exploitation of a vulnerable person. The bill defines the term “vulnerable person” to include persons who are elderly, financially incapable, incapacitated, or those with a disability who are susceptible to force, threat, duress, coercion, persuasion, or physical or emotional injury because of a physical or mental impairment. Under the bill, a court must award a person who brings a successful action enhanced damages, attorney fees, and reasonable fees for any necessary services of a conservator or guardian ad litem.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 895.033 of the statutes is created to read:
4 **895.033 Financial exploitation of a vulnerable individual.** (1) In this
5 section:
6 (a) “Elderly person” means a person 65 years of age or older.

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1 (b) “Financially incapable person” means a person who is unable to manage
2 financial resources of the person effectively for reasons including mental illness,
3 intellectual disability, physical illness or disability, chronic use of drugs or controlled
4 substances, chronic intoxication, confinement, detention by a foreign power, or
5 disappearance.

6 (c) “Incapacitated” has the meaning given in s. 701.0103 (12).

7 (d) “Noneconomic damages” has the meaning given in s. 893.55 (4) (a).

8 (e) “Person with a disability” means a person with a physical or mental
9 impairment that has all of the following characteristics:

10 1. Is likely to continue without substantial improvement for no fewer than 12
11 months or to result in death.

12 2. Prevents performance of substantially all of the ordinary duties of
13 occupations in which an individual not having the physical or mental impairment is
14 capable of engaging, having due regard for the training, experience, and
15 circumstances of the person with the physical or mental impairment.

16 (f) “Vulnerable person” means any of the following:

17 1. An elderly person.

18 2. A financially incapable person.

19 3. An incapacitated person.

20 4. A person with a disability who is susceptible to force, threat, duress, coercion,
21 persuasion, or physical or emotional injury because of the person’s physical or mental
22 impairment.

23 (2) Any of the following persons may, on behalf of a vulnerable person who
24 suffers injury or damage by reason of financial exploitation, bring an action under

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1 this section against a person who has caused the financial exploitation or has
2 permitted another person to engage in financial exploitation:

3 (a) A vulnerable person.

4 (b) A guardian or conservator for a vulnerable person.

5 (c) A personal representative for the estate of a decedent who was a vulnerable
6 person at the time the cause of action arose.

7 (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who
8 is a vulnerable person.

9 **(3)** An action may be brought under this section for financial exploitation of a
10 vulnerable person if any of the following circumstances exist:

11 (a) A person wrongfully takes or appropriates money or property of a
12 vulnerable person, without regard to whether the person taking or appropriating the
13 money or property has a fiduciary relationship with the vulnerable person.

14 (b) A vulnerable person requests that another person transfer to the vulnerable
15 person any money or property that the other person holds or controls and that
16 belongs to or is held in express trust, constructive trust, or resulting trust for the
17 vulnerable person, and the other person, without good cause, either continues to hold
18 the money or property or fails to take reasonable steps to make the money or property
19 readily available to the vulnerable person when all of the following are true:

20 1. The other person or someone acting in concert with the other person acquires
21 ownership or control of the money or property in whole or in part from the vulnerable
22 person.

23 2. The other person acts in bad faith, or knew or should have known of the right
24 of the vulnerable person to have the money or property transferred as requested or
25 otherwise made available to the vulnerable person.

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1 **(4)** A person may bring an action under this section against a person for
2 permitting another person to engage in financial exploitation of a vulnerable person
3 if the person knowingly acts or fails to act under circumstances in which a reasonable
4 person should have known of the financial exploitation.

5 **(5)** A transfer of money or property that is made for the purpose of qualifying
6 a vulnerable person for Medical Assistance benefits or for any other state or federal
7 assistance program, or the holding and exercise of control over money or property
8 after such a transfer, does not constitute a wrongful taking or appropriation under
9 sub. (3) (a) or the holding of money or property without good cause under sub. (3) (b).

10 **(6)** The court shall award all of the following to a plaintiff who prevails in an
11 action under this section:

12 (a) An amount equal to 3 times all economic damages resulting from the
13 financial exploitation, or \$500, whichever amount is greater.

14 (b) An amount equal to 3 times all noneconomic damages resulting from the
15 financial exploitation.

16 (c) Reasonable attorney fees incurred by the plaintiff.

17 (d) Reasonable fees for the services of a conservator or guardian ad litem
18 incurred by reason of the litigation of a claim brought under this section.

19 **(END)**