

2017 DRAFTING REQUEST

Bill

For: Lisa Subeck (608) 266-7521 Drafter: swalkenh
 By: Zach Secondary Drafters:
 Date: 1/20/2017 May Contact:
 Same as LRB: -0146

Submit via email: YES
 Requester's email: Rep.Subeck@legis.wisconsin.gov
 Carbon copy (CC) to: tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Establishing civil cause of action for financial exploitation

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	swalkenh 1/20/2017	jdye 1/23/2017	mbarman 1/23/2017	mbarman 1/23/2017	State S&L

FE Sent For:

<END>

At
Intro.

Walkenhorst Barber, Sarah

From: Madden, Zachary
Sent: Friday, January 20, 2017 4:33 PM
To: Walkenhorst Barber, Sarah
Subject: Bill Draft

Sarah,

Can we get an Assembly version of LRB-0146 (relating to: civil cause of action for financial exploitation) drafted and jacketed.

Thanks,
Zach

Zachary Madden
Legislative Aide,
Representative Lisa Subeck
78th Assembly District
State Capitol, Room 418 North
P.O. Box 8953, Madison, WI 53708
(608) 266-7521



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0146/1
SWB:jld
Keep ↗
1740/1
companion
RM
run

2017 BILL

Companion -
No charges

Requested 1/23/17

pls jacket for Assembly

Regen

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.

pls jacket

BILL**SECTION 1**

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

BILL

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.

Barman, Mike

From: LRB.Legal
To: Rep.Subeck
Subject: Draft review: LRB -1740/1
Attachments: 17-1740/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Sarah Walkenhorst Barber, Legislative Attorney, at (608) 267-3215, at sarah.walkenhorstbarber@legis.wisconsin.gov, or at One East Main Street, Suite 200.

We will jacket this draft for introduction in the Assembly.
(per Sarah Walkenhorst Barber, Legislative Attorney)

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.