



## 1997 ASSEMBLY BILL 539

September 29, 1997 - Introduced by Representatives ZUKOWSKI, SCHAFER, LADWIG, OTT, OWENS, GREEN, ALBERS, OTTE, FREESE, LAZICH, HASENOHRL, RYBA, DOBYNS, HANDRICK, DUFF, TURNER, GOETSCH, SERATTI and KRUSICK, cosponsored by Senators FARROW, ROESSLER, A. LASEE and BRESKE. Referred to Committee on Aging and Long-Term Care.

- 1     **AN ACT to create** 939.627 of the statutes; **relating to:** committing theft against  
2             certain persons and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits various forms of theft. One form of theft is sometimes known as embezzlement. A person commits theft by embezzlement if all of the following apply: 1) by virtue of his or her office, business or employment, or by virtue of being a trustee or other person to whom property is entrusted, the person has possession of money or a negotiable security or other negotiable instrument that is owned by another; 2) the person intentionally uses, transfers, conceals, or retains possession of, the money or negotiable instrument without the owner's consent; and 3) the person uses, transfers, conceals, or retains possession of, the money or negotiable instrument with the intent to convert it to his or her own use or to the use of any person other than the owner.

If a person is convicted of theft by embezzlement for taking property the value of which exceeds \$2,500, he or she may be imprisoned for not more than 10 years or fined not more than \$10,000 or both. In addition, a person convicted of theft by embezzlement may be fined not more than \$10,000 or imprisoned for not more than 5 years or both if the value of the property taken does not exceed \$2,500 but the theft occurs under certain circumstances. One such circumstance is if the property is taken either from: 1) a patient or resident of a protective facility or program (such as an adult day care center, a hospice, a group home, a community-based residential facility, an inpatient health care facility or a treatment facility); or 2) a vulnerable adult (a disabled adult who is substantially mentally incapable of caring for himself

**ASSEMBLY BILL 539**

or herself). Finally, current law provides a number of penalty enhancement provisions to allow for increased penalties whenever crimes are committed under specified circumstances.

This bill provides for an increased penalty for the theft by embezzlement of property worth more than \$2,500 from a vulnerable adult or from a patient or resident of a protective facility or program if the theft by embezzlement is committed by a caretaker of that vulnerable adult or patient or resident. The bill defines "caretaker" to mean a guardian, custodian or trustee of a vulnerable adult or a patient or resident of a protective facility or program, whether or not appointed by a court, or any other person in a position of trust with a vulnerable adult or a patient or resident of a protective facility or program. If a caretaker is convicted of theft by embezzlement under the circumstances covered by the bill, the maximum period of imprisonment is increased by 5 years and the maximum fine is increased by \$5,000.

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

1           **SECTION 1.** 939.627 of the statutes is created to read:

2           **939.627 Increased penalty; theft by caretaker of vulnerable adult. (1)**

3           In this section:

4           (a) "Caretaker" means a guardian, custodian, trustee or other person, whether  
5           or not appointed by a court, who is responsible for the care, custody or control of a  
6           vulnerable adult or the estate of a vulnerable adult, or any other person who stands  
7           in a position of trust with a vulnerable adult. "Caretaker" includes a person acting  
8           under a durable power of attorney.

9           (b) "Developmentally disabled person" has the meaning given in s. 55.01 (2).

10          (c) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

11          (d) "Infirmities of aging" has the meaning given in s. 55.01 (3).

12          (e) "Mental illness" has the meaning given in s. 55.01 (4m).

13          (f) "Other like incapacities" has the meaning given in s. 55.01 (5).

14          (g) "Vulnerable adult" means a person who meets any of the following criteria:

