



2023 ASSEMBLY BILL 116

March 24, 2023 - Introduced by Representatives SUBECK, BALDEH, DRAKE, JOERS, MOORE OMOKUNDE, OHNSTAD, ORTIZ-VELEZ, PALMERI, SINICKI, STUBBS and BEHNKE, cosponsored by Senators WIRCH, HESSELBEIN, SMITH, SPREITZER and TAYLOR. Referred to Committee on Judiciary.

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, or 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, an action for injury or damages suffered by reason of financial exploitation may be brought against a person who has caused the financial exploitation or allowed another person to engage in the financial exploitation by 1) the vulnerable person who suffered the alleged financial exploitation; 2) a guardian or conservator for the vulnerable person; 3) a personal representative for the estate of a decedent who was the vulnerable person when the cause of action arose; or 4) a trustee for a trust on behalf of either a trustor who is the vulnerable person or the spouse of a trustor who is the vulnerable person.

The bill provides that an action may be brought if a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person. An action may also be brought under the bill in certain circumstances if a vulnerable person requests the transfer of money or property that is held in trust and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the

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money or property readily available to the vulnerable person. The bill also allows for an action against a person for permitting another person to engage in financial exploitation if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the financial exploitation.

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:

1 **SECTION 1.** 895.033 of the statutes is created to read:

2 **895.033 Financial exploitation of a vulnerable person.** (1) In this
3 section:

4 (a) “Elderly person” means a person 65 years of age or older.

5 (b) “Financially incapable person” means a person who is unable to manage his
6 or her financial resources effectively for reasons including mental illness,
7 intellectual disability, physical illness or disability, chronic use of drugs or controlled
8 substances, chronic intoxication, confinement, detention by a foreign power, or
9 disappearance.

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

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

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

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

16 2. Prevents performance of substantially all of the ordinary duties of
17 occupations in which an individual not having the physical or mental impairment is

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1 capable of engaging, having due regard for the training, experience, and
2 circumstances of the person with the physical or mental impairment.

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

4 1. An elderly person.

5 2. A financially incapable person.

6 3. An incapacitated person.

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

10 **(2)** Any of the following persons may, on behalf of a vulnerable person who
11 suffers injury or damage by reason of financial exploitation, bring an action under
12 this section against a person who has caused the financial exploitation or has
13 permitted another person to engage in the financial exploitation:

14 (a) The vulnerable person.

15 (b) A guardian or conservator for the vulnerable person.

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

18 (d) A trustee for a trust on behalf of any of the following:

19 1. A trustor who is the vulnerable person.

20 2. The spouse of a trustor who is the vulnerable person.

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

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

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

7 1. The other person or someone acting in concert with the other person acquires
8 ownership or control of the money or property in whole or in part from the vulnerable
9 person.

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

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

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

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

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

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

3 (c) Notwithstanding s. 814.04 (1), reasonable attorney fees incurred by the
4 plaintiff.

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

7 (END)