

HOUSE BILL 736

By Love

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14; Title 40 and Title 71, Chapter 6, Part 1, relative to financial exploitation of the elderly.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 1, is amended by adding the following language as a new section:

(a) As used in this section:

(1) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect or hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this section;

(2) "Caretaker":

(A) Means an individual or institution that has assumed the duty to provide for the care of an adult by contract or agreement;

(B) Includes a parent, spouse, adult child, or other relative, both biological or by marriage, who:

(i) Resides with or in the same building with or regularly visits the adult;

(ii) Knows or reasonably should know of the adult's mental or physical dysfunction or advanced age; and

(iii) Knows or reasonably should know that the adult is unable to adequately provide for the adult's own care; and

(C) Does not mean a financial institution as a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

(3) "Exploit" or "exploitation" means the improper use by a caretaker of funds that have been paid to an adult or to the caretaker for the use or care of the adult; and

(4) "Relative" means spouse; child, including stepchild, adopted, child or foster child; parents, including stepparents, adoptive parents, or foster parents; siblings of the whole or half-blood; stepsiblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces, and nephews.

(b) It is an offense for any person to knowingly, other than by accidental means, exploit an adult within the meaning of this section.

(c) A violation of this subsection (b) is a Class D felony.

(d)

(1) If a person is charged with exploitation that involves the taking or loss of property valued at more than five thousand dollars (\$5,000), a prosecuting attorney may file a petition with the circuit, general sessions, or chancery court of the county in which the defendant has been charged to freeze the funds, assets, or property of the defendant in an amount up to one hundred fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The burden of proof

required to freeze the defendant's assets shall be by a preponderance of the evidence. The hearing on the petition may be held ex parte if necessary to prevent additional exploitation of the victim.

(2) The court's order shall prohibit the sale, gifting, transfer, or wasting of the assets of the adult, both real and personal, owned by, or vested in, the adult, without the express permission of the court.

(3) Upon a showing of probable cause in the ex parte hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to subdivision (d)(1). A copy of the freeze or seize order shall be served upon the defendant whose assets have been frozen or seized.

(e) At any time within thirty (30) days after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets. The court shall hold a hearing on the motion no later than ten (10) days from the date the motion is filed.

(f) In any proceeding to release assets, the burden of proof shall be by a preponderance of evidence and shall be on the state to show that the defendant used, was using, is about to use, or is intending to use any assets in any way that constitutes or would constitute an offense under subsection (b). If the court finds that any assets were being used, are about to be used, or are intended to be used in any way that constitutes or would constitute an offense under subsection (b), the court shall order the assets frozen or held until further order of the court.

(g) If the prosecution of the charge under subsection (b) is permanently terminated or indefinitely continued without any judgment of conviction, or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets.

(h) In addition to other remedies provided by law, an adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for exploitation as defined in this section or for theft of such person's or adult's money or property whether by fraud, deceit, coercion, or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it.