



**H.B. 2**

123rd General Assembly  
(As Introduced)

**Reps. Tiberi, James, Thomas, Taylor, Patton, Grendell, Haines, Pringle, Vesper, Jones, Coughlin, Jerse, Lucas, Brading, Jacobson, Roman, Healy, O'Brien, Boyd, Mottley, Evans, Metelsky, Myers, Terwilleger, Opfer, Hoops, Young, Householder, Goodman, Callender, Damschroder, Corbin, Clancy, Buchy, Gardner, Krebs, Cates, Willamowski, Harris, Metzger, Jolivette, Olman, Womer Benjamin, Mead, Bateman, Schuler, Amstutz, Salerno, Maier, Ogg, Bender, Logan, Allen, D. Miller, Beatty, Wilson, Britton, Weston, Core, Perz, Buehrer**

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**BILL SUMMARY**

- Enacts a provision that prohibits a person, by deception or intimidation, from knowingly obtaining, using, attempting to obtain or use, or conspiring to obtain or use the funds, assets, or property of an elderly person or disabled adult with intent to defraud or deprive that person or adult of the use, benefit, or possession of the funds, assets, or property or with intent to benefit someone other than that person or adult.
- Enacts a provision that prohibits a person who knows or reasonably should know that an elderly person or disabled adult lacks the capacity to consent from: (1) obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of the elderly person or disabled adult with the intent to temporarily or permanently defraud that person or adult of the use, benefit, or possession of that person's or adult's funds, assets, or property, or (2) without privilege to do so, obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of the elderly person or disabled adult with the intent to temporarily or permanently deprive that person or adult of the use, benefit, or possession of that person's or adult's funds, assets, or property or with the intent to benefit someone other than the elderly person or disabled adult.

- Provides that a violation of either provision is the offense of exploitation of an elderly person or disabled adult.

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## CONTENT AND OPERATION

### *Offense of exploitation of an elderly person or disabled adult*

#### *Prohibitions*

The bill enacts a provision that prohibits a person, by "deception" or intimidation, from knowingly doing either of the following (sec. 2913.07(A)) (see **COMMENT** 1 and 2):

(1) Obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of an "elderly person" or a "disabled adult" (see "*Definitions*," below) with the intent to temporarily or permanently "defraud" or "deprive" the elderly person or disabled adult of the use, benefit, or possession of that person's or adult's funds, assets, or property;

(2) Obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of an elderly person or a disabled adult with intent to benefit someone other than the elderly person or disabled adult.

The bill also enacts a provision that prohibits a person who knows or reasonably should know that an elderly person or a disabled adult "lacks the capacity" to consent (see "*Definitions*," below) from doing either of the following (sec. 2913.07(B)):

(1) Obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of the elderly person or disabled adult with the intent to temporarily or permanently defraud the elderly person or disabled adult of the use, benefit, or possession of that person's or adult's funds, assets, or property;

(2) Without "privilege" (see **COMMENT** 3) to do so, obtaining, using, attempting to obtain or use, or conspiring with another to obtain or use the funds, assets, or property of the elderly person or disabled adult with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of that person's or adult's funds, assets, or property or with the intent to benefit someone other than the elderly person or disabled adult.

The bill states that an offender's knowledge or lack of knowledge of the age of a victim of a violation of the bill's prohibitions at the time of the commission of the violation is not a defense to a charge of a violation (sec. 2913.07(D)).

### **Penalties**

A person who violates any of the prohibitions enacted in the bill is guilty of "exploitation of an elderly person or disabled adult." The penalty for the offense depends upon the value of the funds, assets, or property involved in the offense or the loss to the victim, as follows (sec. 2913.07(C)):

(1) If the value or loss is less than \$500, the offense is a felony of the fifth degree.

(2) If the value or loss is \$500 or more and is less than \$5,000, the offense is a felony of the fourth degree.

(3) If the value or loss is \$5,000 or more and is less than \$25,000, the offense is a felony of the third degree.

(4) If the value or loss is \$25,000 or more and is less than \$100,000, the offense is a felony of the second degree.

(5) If the value or loss is \$100,000 or more, the offense is a felony of the first degree.

### **Definitions**

For purposes of the new prohibitions, the bill defines the following terms (sec. 2913.07(E)):

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "Disabled adult" means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unfit to work at substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by a state or federal agency that has the function of so classifying persons.

(3) "Lacks the capacity to consent" means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and

carry out reasonable decisions concerning the person or the person's resources, with or without the assistance of a caretaker.

(4) "Reasonable decisions" means decisions made in daily living that facilitate the provision of food, shelter, clothing, and health care necessary for life support.

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## COMMENT

1. Existing sec. 2913.01, not in the bill, defines the following terms that apply to the new prohibitions enacted in the bill:

(a) "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

(b) "Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

(c) "Deprive" means to do any of the following: (i) withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration, (ii) dispose of property so as to make it unlikely that the owner will recover it, or (iii) accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

2. Existing sec. 2913.02, unchanged by the bill, contains several general prohibitions against theft, some of which are deception-based or threat-based. It provides that:

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat.

(B) Whoever violates this section is guilty of theft. Except as otherwise provided in this division, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of this section is theft, a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars or if the property stolen is a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code, a violation of this section is grand theft, a felony of the fourth degree. If the property stolen is a motor vehicle, as defined in section 4501.01 of the Revised Code, a violation of this section is grand theft of a motor vehicle, a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more, a violation of this section is aggravated theft, a felony of the third degree. If the property stolen is any dangerous drug, as defined in section 4729.01 of the Revised Code, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, as defined in section 2925.01 of the Revised Code, a felony of the third degree.

3. Existing sec. 2901.01, not in the bill, defines "privilege," for purposes of the Revised Code, as an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 84

H0002-I.123/jc