

**HOUSE . . . . . No. 1366**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Paul R. Heroux***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the prevention of financial exploitation of the elderly.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/12/2015</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/1/2015</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/4/2015</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	<i>1/31/2015</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>2/4/2015</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>1/28/2015</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>2/4/2015</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/23/2015</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>1/29/2015</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/1/2015</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>1/30/2015</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>1/29/2015</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2015</i>

**HOUSE . . . . . No. 1366**

By Mr. Heroux of Attleboro, a petition (accompanied by bill, House, No. 1366) of Paul R. Heroux and others relative to the prevention of financial exploitation of the elderly. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4077 OF 2013-2014.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act relative to the prevention of financial exploitation of the elderly.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 266 of the General Laws is hereby amended by inserting after section 25 the  
2 following section:

3 Section 25A.

4 (a) For purposes of this section, the following terms shall have the following meanings:-

5 "Deception", a misrepresentation or concealment of material fact relating to the terms of  
6 a contract or agreement entered into with the elderly person or to the existing or preexisting  
7 condition of any of the property involved in such contract or agreement, or the use or  
8 employment of any misrepresentation, false pretense or false promise in order to induce,  
9 encourage or solicit the elderly person to enter into a contract or agreement. Deception includes:

10 (i) Creating or confirming another person's impression which is false and which the  
11 offender does not believe to be true;

12 (ii) Failure to correct a false impression which the offender previously has created or  
13 confirmed;

14 (iii) Preventing another person from acquiring information pertinent to the disposition of  
15 the property involved;

16 (iv) Selling or otherwise transferring or encumbering property, failing to disclose a lien,  
17 adverse claim or other legal impediment to the enjoyment of the property, whether such  
18 impediment is or is not valid, or is or is not a matter of official record; and

19 (v) Promising performance which the offender does not intend to perform or knows will  
20 not be performed. Failure to perform standing alone is not sufficient evidence to prove that the  
21 offender did not intend to perform;

22 "Elderly person", a person 60 years of age or older.

23 "Intimidation", a threat of physical or emotional harm to an elderly person, or the  
24 communication to an elderly person that he or she will be deprived of food and nutrition, shelter,  
25 prescribed medication, or medical care and treatment.

26 "Undue influence", use of influence by 1 person or entity over an elderly person in order  
27 to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony.  
28 Undue influence includes, but is not limited to, the improper or fraudulent use of a power of  
29 attorney, guardianship, conservatorship, or other fiduciary authority.

30 (b) Whoever, after having been convicted of said crime commits a first such crime, shall  
31 be punished by a punishment commensurate with the level of severity of the crime as determined  
32 by the court.

33 (c) Whoever, after having been convicted of said crime commits a second or subsequent  
34 such crime, shall be punished by imprisonment. The provisions of section 87 of chapter 276  
35 relating to the power of the court to place certain offenders on probation may apply to any person  
36 18 years of age or over charged with a violation of this subsection.

37 (d) If a person is charged with financial exploitation of an elderly person that involves the  
38 taking or loss of property valued at more than \$2,500, a prosecuting attorney may file a petition  
39 with the court of the county in which the defendant has been charged to freeze the assets of the  
40 defendant in an amount equal to but not greater than the alleged value of lost or stolen property  
41 in the defendant's pending criminal proceeding for purposes of restitution to the victim. The  
42 burden of proof required to freeze the defendant's assets shall be by a preponderance of the  
43 evidence.

44 A person commits the crime of financial exploitation of an elderly person if:

45 (i) such person knowingly by deception, intimidation, undue influence, or force obtains  
46 control over the elderly person's property with the intent to permanently deprive the elderly  
47 person of the use, benefit or possession of his or her property thereby benefitting such person or  
48 detrimentally affecting the elderly person;

49 (ii) such a person obtains or uses, endeavoring to obtain or use, or conspiring with  
50 another to obtain or use an elderly person's funds, assets, or property with the intent to  
51 temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or

52 possession of the funds, assets, or property, or to benefit someone other than the elderly person  
53 or disabled adult, by a person who knows or reasonably should know that the elderly person or  
54 disabled adult lacks the capacity to consent; or

55 (iii) such a person breaches a fiduciary duty to an elderly person by the person's guardian  
56 or agent under a power of attorney which results in an unauthorized appropriation, sale, or  
57 transfer of property.

58 (c) Nothing in this section shall be construed to limit the remedies available to the victim  
59 pursuant to any state law relating to domestic violence.

60 (d) Nothing in this section shall be construed to impose criminal liability on a person who  
61 has made a good faith effort to assist the elderly person in the management of his or her property,  
62 but through no fault of his or her own has been unable to provide such assistance.

63 (e) Nothing in this section shall limit the ability to engage in bona fide estate planning, to  
64 transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that such  
65 actions do not adversely impact the standard of living to which the elderly person has become  
66 accustomed at the time of such actions.

67 (f) It shall not be a defense to financial exploitation of an elderly person that the accused  
68 reasonably believed that the victim was not an elderly person.

69 (g) (1) It shall be unlawful in violation of this section for any person receiving or in the  
70 possession of funds of a Medicaid-eligible elderly person residing in a Commonwealth licensed  
71 facility who intentionally fail to remit to the facility in which the Medicaid-eligible person  
72 resides all money owing the facility resident from any source, including, but not limited to,

73 Social Security, railroad retirement, or payments from any other source disclosed as resident  
74 income contained in the records of the department of social services, family support division or  
75 its successor. The appropriate state agency, family support division or its successor is authorized  
76 to release information from its records containing the resident's income or assets to any  
77 prosecuting or circuit attorney in the commonwealth for purposes of investigating or prosecuting  
78 any suspected violation of this section.

79 (2) The prosecuting attorney of any county containing a commonwealth licensed facility,  
80 who successfully prosecutes a violation of the provisions of this subsection, may request the  
81 court of the county in which the offender admits to or is found guilty of a violation, as a  
82 condition of sentence or probation, to order restitution of all amounts unlawfully withheld from a  
83 facility in his or her county. Any order of restitution entered by the court or by agreement shall  
84 provide that 10 per cent of any restitution installment or payment paid by or on behalf of the  
85 defendant or defendants shall be paid to the prosecuting or circuit attorney of the county  
86 successfully prosecuting the violation to compensate for the cost of prosecution with the  
87 remaining amount to be paid to the facility. If the defendant committed financial exploitation as a  
88 result of supporting a substance abuse addiction, when appropriate the preferred sentence shall  
89 include treatment for the substance abuse addiction and restitution for the first offense.

90 (h) Civil Liability. A person who is charged by information or indictment with the  
91 offense of financial exploitation of an elderly person or person with a disability and who fails or  
92 refuses to return the victim's property within 60 days following a written demand from the victim  
93 or the victim's legal representative shall be liable to the victim or to the estate of the victim in  
94 damages of treble the amount of the value of the property obtained, plus reasonable attorney fees  
95 and court costs. The burden of proof that the defendant unlawfully obtained the victim's property

96 shall be by a preponderance of the evidence. This subsection shall be operative whether or not  
97 the defendant has been convicted of the offense.