

CHAPTER 151
HB 1555-FN – FINAL VERSION

25Mar2014... 1054h
30Apr2014... 1649EBA

2014 SESSION

14-2152
01/04

HOUSE BILL ***1555-FN***

AN ACT relative to the neglect of elderly, disabled, or impaired adults and relative to financial exploitation.

SPONSORS: Rep. K. Rogers, Merr 28; Rep. M. Mann, Rock 32; Rep. Ames, Ches 9; Rep. Baldasaro, Rock 5; Rep. Fields, Belk 4; Rep. J. MacKay, Merr 14; Rep. L. Ober, Hills 37; Rep. Sedensky, Rock 13; Rep. Schamberg, Merr 4; Sen. Woodburn, Dist 1; Sen. D'Allesandro, Dist 20; Sen. Soucy, Dist 18

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill establishes the crime of financial exploitation of an elderly, disabled, or impaired adult and imposes a mandatory sentence of imprisonment for a second or subsequent offense of criminal neglect or financial exploitation of such person.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 151
HB 1555-FN – FINAL VERSION

25Mar2014... 1054h
30Apr2014... 1649EBA

14-2152
01/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the neglect of elderly, disabled, or impaired adults and relative to financial exploitation.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 151:1 Statement of Purpose. The purpose of this act is to provide clear guidance relative to
2 actions that constitute the crime of financial exploitation of elderly, disabled, or impaired adults and
3 to encourage the cooperation of law enforcement officials, courts of competent jurisdiction and all
4 appropriate state agencies providing human services in identifying these crimes. It is the intent of
5 the general court to send a clear message to the public that financial exploitation of elderly, disabled,
6 or impaired adults shall not be tolerated and that the provisions of this act shall be liberally
7 construed to ensure that persons engaging in these unlawful acts be held criminally liable to the full
8 extent of the law.

9 151:2 Criminal Neglect of Elderly, Disabled, or Impaired Adults; Definitions. Amend RSA 631:8,
10 I(e) to read as follows:

11 (e) “Impaired adult” means any adult who suffers from an impairment by reason of
12 mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic
13 use of drugs, chronic intoxication, memory loss, or other cause, that causes an adult to lack sufficient
14 understanding or capacity to make or communicate reasonable decisions concerning the adult’s
15 person or property or ~~[to be substantially impaired in the adult’s ability to provide adequately for his~~
16 ~~or her own care and custody]~~ ***exhibits the functional limitations as defined in RSA 464-A:2,***
17 ***VII. Impaired adult includes a person determined to be incapacitated under RSA 161-F or***
18 ***RSA 464-A.***

19 151:3 New Subparagraph; Criminal Neglect of Elderly, Disabled, or Impaired Adults; Definition
20 Added. Amend RSA 631:8, I by inserting after subparagraph (h) the following new paragraph:

21 (i) “Undue influence” means the intentional use, by a person in a position of trust and
22 confidence with an elderly, disabled, or impaired adult, of that position to obtain an unfair
23 advantage over the elderly, disabled, or impaired adult, through actions or tactics, including, but not
24 limited to, emotional, psychological, and legal manipulation.

25 151:4 New Sections; Financial Exploitation of Elderly, Disabled, or Impaired Adults; Penalties.
26 Amend RSA 631 by inserting after section 8 the following new sections:

27 631:9 Financial Exploitation of an Elderly, Disabled, or Impaired Adult.

CHAPTER 151
HB 1555-FN – FINAL VERSION
- Page 2 -

1 I. Whoever commits any of the following acts against an elderly, disabled, or impaired adult,
2 as defined in RSA 631:8, shall be guilty of financial exploitation and penalized pursuant to RSA
3 631:10 if:

4 (a) In breach of a fiduciary obligation recognized in law, including pertinent regulations,
5 contractual obligations, documented consent by a competent person, including, but not limited to, an
6 agent under a durable power of attorney, guardian, conservator, or trustee, a person, knowingly or
7 recklessly, for his or her own profit or advantage:

8 (1) Fails to use the real or personal property or other financial resources of the
9 elderly, disabled, or impaired adult to provide food, clothing, shelter, health care, therapeutic
10 conduct, or supervision for the elderly, disabled, or impaired adult when under a duty to do so; or

11 (2) Unless authorized by the instrument establishing fiduciary obligation, deprives,
12 uses, manages, or takes either temporarily or permanently the real or personal property or other
13 financial resources of the elderly, disabled, or impaired adult for the benefit of someone other than
14 the elderly, disabled, or impaired adult; or

15 (b) In the absence of legal authority a person knowingly or recklessly through the use of
16 undue influence, harassment, duress, force, compulsion, or coercion:

17 (1) Acquires possession or control of an interest in real or personal property or other
18 financial resources of an elderly, disabled, or impaired adult;

19 (2) Induces an elderly, disabled, or impaired adult against the elderly, disabled, or
20 impaired adult's will to perform services for the profit or advantage of another; or

21 (3) Establishes a relationship with a fiduciary obligation to an elderly, disabled, or
22 impaired adult that gives the person control of an interest in real or personal property or other
23 financial resources of an elderly, disabled, or impaired adult.

24 II. State and local law enforcement agencies shall have concurrent jurisdiction to investigate
25 reports of abuse, neglect, or exploitation of incapacitated adults as defined in RSA 161-F or RSA 464-
26 A and all other crimes against elderly, disabled, or impaired adult victims including, but not limited
27 to, the crimes set forth in RSA 631:8 and this section. Nothing in this paragraph shall be construed
28 to alter the duties and responsibilities of the commissioner of the department of health and human
29 services, or his or her designees, relative to investigating reports of abuse, neglect, self-neglect, or
30 exploitation of incapacitated adults pursuant to RSA 161-F.

31 III. Nothing in this section requires a health or residential care facility, licensed under
32 RSA 151, or any person to provide financial management or supervise financial management for an
33 elderly, disabled, or impaired adult except as otherwise required by law.

34 IV. If the person knew or had reason to know that the elderly, disabled, or impaired adult
35 lacked capacity to consent, consent is not a defense to a violation of this section.

CHAPTER 151
HB 1555-FN – FINAL VERSION
- Page 3 -

1 V. Nothing in this section shall be construed to impose criminal liability on a person who
2 makes a good faith effort to assist an elderly, disabled, or impaired adult in the management of
3 funds, assets, or property which effort fails through no fault of the person.

4 631:10 Penalties.

5 I. Any person who violates RSA 631:8-a and who knows or reasonably should know that the
6 victim is an elderly, disabled, or impaired adult shall be guilty of:

7 (a) A class A felony if the funds, assets, or property involved in the exploitation of the
8 elderly, disabled, or impaired adult is valued at \$1,500 or more; or

9 (b) A class B felony if the funds, assets, or property involved in the exploitation of the
10 elderly, disabled, or impaired adult is valued at \$1,000 or more, but less than \$1,500; or

11 (c) A misdemeanor if the funds, assets, or property involved in the exploitation of the
12 elderly, disabled, or impaired adult is valued at less than \$1,000.

13 II. A person convicted of financial exploitation shall be sentenced to make restitution of the
14 full value of the fund, assets, or property involved in the exploitation to the elderly, disabled, or
15 impaired adult or the adult's estate in accordance with RSA 651:63.

16 151:5 Effective Date. This act shall take effect January 1, 2015.

17
18 Approved: June 19, 2014

19 Effective Date: January 1, 2015