

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 527

H.P. 346

House of Representatives, February 19, 2013

An Act To Protect Elders and Vulnerable Adults from Exploitation

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DION of Portland.
Cosponsored by Senator CAIN of Penobscot and
Representatives: CHIPMAN of Portland, Speaker EVES of North Berwick, FREY of Bangor,
GIDEON of Freeport, HERBIG of Belfast, PEOPLES of Westbrook, RANKIN of Hiram,
SAUCIER of Presque Isle.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA §109, sub-§3, ¶¶B and C**, as enacted by PL 1981, c. 324,
3 §27, are amended to read:

4 B. It is given by a person who, by reason of intoxication, mental illness or defect,
5 dementia or other cognitive impairment or youth, is manifestly unable, or known by
6 the defendant to be unable, to make a reasonable judgment as to the nature or
7 harmfulness of the conduct charged to constitute the crime; or

8 C. It is induced by force, duress ~~or~~, deception or undue influence.

9 **Sec. 2. 17-A MRSA §109, sub-§4** is enacted to read:

10 **4.** As used in this section, "undue influence" means the misuse of real or apparent
11 authority or the use of manipulation by a person in a trusting, confidential or fiduciary
12 relationship with a person who has significant limitations in physical or emotional
13 functioning, who is wholly or partially dependent upon that person or others for care or
14 support, either emotional or physical, and who:

15 A. Is 60 years of age or older;

16 B. Is an incapacitated adult as defined in Title 22, section 3472, subsection 10; or

17 C. Is a dependent adult as defined in Title 22, section 3472, subsection 6.

18 **Sec. 3. 17-A MRSA §903, sub-§3**, as enacted by PL 1975, c. 499, §1, is amended
19 to read:

20 **3.** ~~Misuse~~ Except as provided in subsection 4, misuse of entrusted property is a
21 Class D crime.

22 **Sec. 4. 17-A MRSA §903, sub-§4** is enacted to read:

23 **4.** If a person violates subsection 1 and the owner or person for whose benefit the
24 property was entrusted is 60 years of age or older, an incapacitated adult as defined in
25 Title 22, section 3472, subsection 10 or a dependent adult as defined in Title 22, section
26 3472, subsection 6 and:

27 A. The value of the property is more than \$1,000 but not more than \$10,000, the
28 violation of subsection 1 is a Class C crime; or

29 B. The value of the property is more than \$10,000, the violation of subsection 1 is a
30 Class B crime.

31 **SUMMARY**

32 This bill provides that dementia and other cognitive impairments are included in the
33 concept of being manifestly unable to make a reasonable judgement regarding conduct
34 that constitutes a crime when considering consent as a defense. It further provides that
35 consent cannot be induced by "undue influence," which is defined to mean misuse or
36 manipulation of a trusting relationship of a dependent person who has significant

1 limitations and who is 60 years of age or older, an incapacitated adult or a dependent
2 adult. Finally, the bill increases the crime of the misuse of entrusted property to a felony
3 when the victim is 60 years of age or older, incapacitated or dependent and the value of
4 the property is greater than \$1,000 to be consistent with the crime of theft.