

# MAINE STATE LEGISLATURE

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L.D. 316

Date: 5/17/19 Minority

(Filing No. H-298)

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 240, L.D. 316, Bill, "An Act To Protect Adults 66 Years of Age and Older from Financial and Other Types of Exploitation through Theft by Deception"

Amend the bill by striking out the title and substituting the following:

**'An Act To Protect Vulnerable Persons from Theft'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**Sec. 1. 17-A MRSA §352, sub-§6** is enacted to read:

6. "Vulnerable person" means a dependent adult as defined in Title 22, section 3472, subsection 6 or an incapacitated adult as defined in Title 22, section 3472, subsection 10.

**Sec. 2. 17-A MRSA §353, sub-§1, ¶A**, as amended by PL 2005, c. 199, §4, is further amended to read:

A. The person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property and the owner of the property is not a vulnerable person. Violation of this paragraph is a Class E crime;

**Sec. 3. 17-A MRSA §353, sub-§1, ¶A-1** is enacted to read:

A-1. The person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property and the owner of the property is a vulnerable person. Violation of this paragraph is a Class D crime;

**Sec. 4. 17-A MRSA §353, sub-§1, ¶B**, as amended by PL 2007, c. 476, §10, is further amended to read:

B. The person violates paragraph A or A-1 and:

(1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;

**COMMITTEE AMENDMENT**

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- 1 (2) The property stolen is a firearm or an explosive device. Violation of this  
2 subparagraph is a Class B crime;
- 3 (3) The person is armed with a dangerous weapon at the time of the offense.  
4 Violation of this subparagraph is a Class B crime;
- 5 (4) The value of the property is more than \$1,000 but not more than \$10,000 and  
6 the owner of the property is not a vulnerable person. Violation of this  
7 subparagraph is a Class C crime;
- 8 (4-A) The value of the property is more than \$1,000 but not more than \$10,000  
9 and the owner of the property is a vulnerable person. Violation of this  
10 subparagraph is a Class B crime;
- 11 (5) The value of the property is more than \$500 but not more than \$1,000 and the  
12 owner of the property is not a vulnerable person. Violation of this subparagraph  
13 is a Class D crime; ~~or~~
- 14 (5-A) The value of the property is more than \$500 but not more than \$1,000 and  
15 the owner of the property is a vulnerable person. Violation of this subparagraph  
16 is a Class C crime;
- 17 (6) The person has 2 or more prior convictions for any combination of the Maine  
18 offenses listed in this subparagraph or for engaging in substantially similar  
19 conduct to that of the Maine offenses listed in this subparagraph in another  
20 jurisdiction and the owner of the property is not a vulnerable person. The Maine  
21 offenses are: theft; any violation of section 401 in which the crime intended to be  
22 committed inside the structure is theft; any violation of section 405 in which the  
23 crime intended to be committed inside the motor vehicle is theft; any violation of  
24 section 651; any violation of section 702, 703 or 708; or attempts to commit any  
25 of these crimes. Section 9-A governs the use of prior convictions when  
26 determining a sentence. Violation of this subparagraph is a Class C crime; or
- 27 (7) The person has 2 or more prior convictions for any combination of the Maine  
28 offenses listed in this subparagraph or for engaging in substantially similar  
29 conduct to that of the Maine offenses listed in this subparagraph in another  
30 jurisdiction and the owner of the property is a vulnerable person. The Maine  
31 offenses are: theft; any violation of section 401 in which the crime intended to be  
32 committed inside the structure is theft; any violation of section 405 in which the  
33 crime intended to be committed inside the motor vehicle is theft; any violation of  
34 section 651; any violation of section 702, 703 or 708; or attempts to commit any  
35 of these crimes. Section 9-A governs the use of prior convictions when  
36 determining a sentence. Violation of this subparagraph is a Class B crime; or

37 **Sec. 5. 17-A MRSA §354, sub-§1, ¶A**, as enacted by PL 2001, c. 383, §34 and  
38 affected by §156, is amended to read:

39 A. The person obtains or exercises control over property of another as a result of  
40 deception and with intent to deprive the other person of the property and the owner of  
41 the property is not a vulnerable person. Violation of this paragraph is a Class E  
42 crime; ~~or~~

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Sec. 6. 17-A MRSA §354, sub-§1, ¶A-1 is enacted to read:

A-1. The person obtains or exercises control over property of another as a result of deception and with intent to deprive the other person of the property and the owner of the property is a vulnerable person. Violation of this paragraph is a Class D crime; or

Sec. 7. 17-A MRSA §354, sub-§1, ¶B, as amended by PL 2007, c. 476, §11, is further amended to read:

B. The person violates paragraph A or A-1 and:

(1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The property stolen is a firearm or an explosive device. Violation of this subparagraph is a Class B crime;

(3) The person is armed with a dangerous weapon at the time of the offense. Violation of this subparagraph is a Class B crime;

(4) The value of the property is more than \$1,000 but not more than \$10,000 and the owner of the property is not a vulnerable person. Violation of this subparagraph is a Class C crime;

(4-A) The value of the property is more than \$1,000 but not more than \$10,000 and the owner of the property is a vulnerable person. Violation of this subparagraph is a Class B crime;

(5) The value of the property is more than \$500 but not more than \$1,000 and the owner of the property is not a vulnerable person. Violation of this subparagraph is a Class D crime; or

(5-A) The value of the property is more than \$500 but not more than \$1,000 and the owner of the property is a vulnerable person. Violation of this subparagraph is a Class C crime;

(6) The person has 2 or more prior convictions for any combination of the Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction and the owner of the property is not a vulnerable person. The Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime; or

(7) The person has 2 or more prior convictions for any combination of the Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction and the owner of the property is a vulnerable person. The Maine offenses are: theft; any violation of section 401 in which the crime intended to be

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1 committed inside the structure is theft; any violation of section 405 in which the  
2 crime intended to be committed inside the motor vehicle is theft; any violation of  
3 section 651; any violation of section 702, 703 or 708; or attempts to commit any  
4 of these crimes. Section 9-A governs the use of prior convictions when  
5 determining a sentence. Violation of this subparagraph is a Class B crime.

6 **Sec. 8. 17-A MRSA §358, sub-§1, ¶A,** as enacted by PL 2001, c. 383, §43 and  
7 affected by §156, is amended to read:

8 A. The person obtains property from anyone or personal services from an employee  
9 upon agreement, or subject to a known legal obligation, to make a specified payment  
10 or other disposition to a 3rd person or to a fund administered by that person, whether  
11 from that property or its proceeds or from that person's own property to be reserved in  
12 an equivalent or agreed amount, if that person intentionally or recklessly fails to  
13 make the required payment or disposition and deals with the property obtained or  
14 withheld as that person's own and the owner of the property is not a vulnerable  
15 person. Violation of this paragraph is a Class E crime; or

16 **Sec. 9. 17-A MRSA §358, sub-§1, ¶A-1** is enacted to read:

17 A-1. The person obtains property from anyone or personal services from an  
18 employee upon agreement, or subject to a known legal obligation, to make a specified  
19 payment or other disposition to a 3rd person or to a fund administered by that person,  
20 whether from that property or its proceeds or from that person's own property to be  
21 reserved in an equivalent or agreed amount, if that person intentionally or recklessly  
22 fails to make the required payment or disposition and deals with the property  
23 obtained or withheld as that person's own and the owner of the property is a  
24 vulnerable person. Violation of this paragraph is a Class D crime; or

25 **Sec. 10. 17-A MRSA §358, sub-§1, ¶B,** as amended by PL 2007, c. 476, §16, is  
26 further amended to read:

- 27 B. The person violates paragraph A or A-1 and:
- 28 (1) The value of the property is more than \$10,000. Violation of this  
29 subparagraph is a Class B crime;
  - 30 (2) The property stolen is a firearm or an explosive device. Violation of this  
31 subparagraph is a Class B crime;
  - 32 (3) The person is armed with a dangerous weapon at the time of the offense.  
33 Violation of this subparagraph is a Class B crime;
  - 34 (4) The value of the property is more than \$2,000 and the person is a payroll  
35 processor. Violation of this paragraph is a Class B crime;
  - 36 (5) The value of the property is more than \$1,000 but not more than \$10,000 and  
37 the owner of the property is not a vulnerable person. Violation of this  
38 subparagraph is a Class C crime;
  - 39 (5-A) The value of the property is more than \$1,000 but not more than \$10,000  
40 and the owner of the property is a vulnerable person. Violation of this  
41 subparagraph is a Class B crime;

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1 (6) The value of the property is more than \$500 but not more than \$1,000 and the  
2 owner of the property is not a vulnerable person. Violation of this subparagraph  
3 is a Class D crime;

4 (6-A) The value of the property is more than \$500 but not more than \$1,000 and  
5 the owner of the property is a vulnerable person. Violation of this subparagraph  
6 is a Class C crime;

7 (7) The value of the property is more than \$1,000 but not more than \$2,000 and  
8 the person is a payroll processor. Violation of this subparagraph is a Class C  
9 crime;

10 (8) The person is a payroll processor and has 2 or more prior convictions for any  
11 combination of the Maine offenses listed in this subparagraph or for engaging in  
12 substantially similar conduct to that of the Maine offenses listed in this  
13 subparagraph in another jurisdiction. The Maine offenses are: theft; any  
14 violation of section 401 in which the crime intended to be committed inside the  
15 structure is theft; any violation of section 405 in which the crime intended to be  
16 committed inside the motor vehicle is theft; any violation of section 651; any  
17 violation of section 702, 703 or 708; or attempts to commit any of these crimes.  
18 Section 9-A governs the use of prior convictions when determining a sentence.  
19 Violation of this subparagraph is a Class B crime; ~~or~~

20 (9) The person has 2 or more prior convictions for any combination of the Maine  
21 offenses listed in this subparagraph or for engaging in substantially similar  
22 conduct to that of the Maine offenses listed in this subparagraph in another  
23 jurisdiction and the owner of the property is not a vulnerable person. The Maine  
24 offenses are: theft; any violation of section 401 in which the crime intended to be  
25 committed inside the structure is theft; any violation of section 405 in which the  
26 crime intended to be committed inside the motor vehicle is theft; any violation of  
27 section 651; any violation of section 702, 703 or 708; or attempts to commit any  
28 of these crimes. Section 9-A governs the use of prior convictions when  
29 determining a sentence. Violation of this subparagraph is a Class C crime; or

30 (10) The person has 2 or more prior convictions for any combination of the  
31 Maine offenses listed in this subparagraph or for engaging in substantially similar  
32 conduct to that of the Maine offenses listed in this subparagraph in another  
33 jurisdiction and the owner of the property is a vulnerable person. The Maine  
34 offenses are: theft; any violation of section 401 in which the crime intended to be  
35 committed inside the structure is theft; any violation of section 405 in which the  
36 crime intended to be committed inside the motor vehicle is theft; any violation of  
37 section 651; any violation of section 702, 703 or 708; or attempts to commit any  
38 of these crimes. Section 9-A governs the use of prior convictions when  
39 determining a sentence. Violation of this subparagraph is a Class B crime.

40 **Sec. 11. 17-A MRSA §903, sub-§4, as enacted by PL 2013, c. 414, §5, is**  
41 **amended to read:**

42 4. If a misuse of entrusted property results in the loss of a vulnerable person's  
43 property or the loss of property entrusted to a person for the benefit of a vulnerable

# COMMITTEE AMENDMENT

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1 person and, at the time of the offense, the owner or the beneficiary of the property is a  
2 vulnerable person; the misuse of entrusted property is a Class B crime.

3 ~~A. If the value of the property is more than \$1,000 but not more than \$10,000, the~~  
4 ~~misuse of entrusted property is a Class C crime; and~~

5 ~~B. If the value of the property is more than \$10,000, the misuse of entrusted property~~  
6 ~~is a Class B crime.~~

7 As used in this subsection, "vulnerable person" means an incapacitated adult as defined in  
8 Title 22, section 3472, subsection 10 or a dependent adult as defined in Title 22, section  
9 3472, subsection 6.

10 **Sec. 12. Appropriations and allocations.** The following appropriations and  
11 allocations are made.

12 **INDIGENT LEGAL SERVICES, MAINE COMMISSION ON**  
13 **Maine Commission on Indigent Legal Services Z112**

14 Initiative: Provides funding for increased costs to the Maine Commission on Indigent  
15 Legal Services due to elevating the class of certain crimes of theft or fraud if the victim is  
16 a vulnerable person.

17	<b>GENERAL FUND</b>	<b>2019-20</b>	<b>2020-21</b>
18	All Other	\$17,850	\$23,800
19			
20	<b>GENERAL FUND TOTAL</b>	<u>\$17,850</u>	<u>\$23,800</u>
21			

22 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
23 section number to read consecutively.

24 **SUMMARY**

25 This amendment is the minority report of the committee. The amendment replaces  
26 the bill. The amendment defines "vulnerable person" by reference to the definitions of  
27 "dependent adult" in the Maine Revised Statutes, Title 22, section 3472, subsection 6 and  
28 "incapacitated adult" in Title 22, section 3472, subsection 10. The amendment elevates  
29 the class of the following crimes of theft or fraud by one class, up to a maximum of Class  
30 B, if the owner of the property is a vulnerable person: theft by unauthorized taking or  
31 transfer, theft by deception, theft by misapplication of property and misuse of entrusted  
32 property.

33 **FISCAL NOTE REQUIRED**

34 (See attached)



# 129th MAINE LEGISLATURE

LD 316

LR 806(03)

## An Act To Protect Adults 66 Years of Age and Older from Financial and Other Types of Exploitation through Theft by Deception

Fiscal Note for Bill as Amended by Committee Amendment *B(H-298)*

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

### Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
<b>Net Cost (Savings)</b>				
General Fund	\$17,850	\$23,800	\$23,800	\$23,800
<b>Appropriations/Allocations</b>				
General Fund	\$17,850	\$23,800	\$23,800	\$23,800

### Fiscal Detail and Notes

This bill would raise the class of various theft crimes by one class, up to a maximum of Class B, if the victim is a vulnerable person. Currently, theft from a vulnerable person could range from a Class E to a Class B crime, depending on the circumstances of the case.

In 2018 the Maine Commission on Indigent Legal Services handled about 3,400 cases under the theft crime sections changed in this bill that were not already charged as Class B crimes. Of these, about half were class E crimes. The commission does not face increased costs from a crime moving from a Class E to a Class D. However, the average incremental cost of one case moving from a Class D to a Class C or from a Class C to a Class B is \$400. Assuming that 2%-5% of the relevant non-Class E cases are committed against a vulnerable person, it is estimated that 34 to 85 cases could face an elevation in the class of the crime. This would represent increased costs to the commission of \$13,600 to \$34,000, or an average of \$23,800 per year. The bill provides \$17,850 to the commission in fiscal year 2019-20 and \$23,800 in fiscal year 2020-21.

In addition, the Maine Department of Corrections (DOC) will face increased costs due to more incarcerated individuals and individuals incarcerated for longer periods of time. It is unclear how many individuals would be convicted of an elevated class of crime as a result of this bill. The incremental difference to the DOC of increasing a Class C crime to a Class B is \$27,506 per sentence. The incremental cost of increasing from a Class D to a Class C is \$44,106. The DOC has not indicated the need for additional funding at this time and no funding is included in the bill for the DOC.

The additional workload associated with the minimal number of new cases filed does not require additional funding at this time for the courts. The collection of additional fine revenue will increase General Fund and dedicated revenue by minor amounts.