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CRIMINAL JUSTICE AND PUBLIC SAFETY

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

COMMITTEE AMENDMENT “ ” 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;

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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~~

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

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

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

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

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

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

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

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

17 (4-A) The value of the property is more than \$1,000 but not more than \$10,000
18 and the owner of the property is a vulnerable person. Violation of this
19 subparagraph is a Class B crime;

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

23 (5-A) The value of the property is more than \$500 but not more than \$1,000 and
24 the owner of the property is a vulnerable person. Violation of this subparagraph
25 is a Class C crime;

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

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

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; ø

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;

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

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	GENERAL FUND	2019-20	2020-21
18	All Other	\$17,850	\$23,800
19			
20	GENERAL FUND TOTAL	<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)**