

HOUSE BILL NO. 660
INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CIVIL ACTION FOR DAMAGES AND A CRIMINAL OFFENSE FOR TAKING OR REDUCING IN VALUE PROPERTY OR AN INTEREST IN PROPERTY OF A MEMBER OF THE ARMED FORCES BASED UPON THE USE OF A POWER OF ATTORNEY; PROVIDING A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, since the start of Operation Enduring Freedom in 2001, thousands of members of the armed forces have deployed from Montana, leaving their property behind them to be looked after by spouses, families, or friends; and

WHEREAS, many of those deployed members of the armed forces executed powers of attorney before deploying, by which the deploying members of the armed forces gave to a spouse, family member, or friend full legal authority to manage the property of the deployed member of the armed forces and, in so doing, authorized the individual receiving the power of attorney to buy and sell property or otherwise manage the financial interests of the member of the armed forces; and

WHEREAS, in the great majority of the cases in which powers of attorney for management of the property and financial affairs of a deployed member of the armed forces were given, no difficulty regarding the use of the power of attorney arose, but in a small number of cases, the trust of the member of the armed forces was violated by a family member or a friend who exploited the legal authority of the power of attorney to appropriate or convert the property of the member of the armed forces for the individual's own purposes; and

WHEREAS, the Legislature considers it to be a particularly contemptible act for a trusted family member or friend to take advantage of the absence of, and the power of attorney given by, a deployed member of the armed forces, who is serving the member's country and state, by stealing from that member at a time that the member is vulnerable because of the absence of the member and because a power of attorney has been given by that member; and

WHEREAS, the Legislature enacts the civil and criminal provisions contained in [sections 1 and 2] in order to deter, or provide a remedy after the fact of, theft from a member of the armed forces based upon the use of a power of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Civil liability for theft from member of armed forces based upon power of attorney. (1) (a) An individual who exerts control over property or an interest in property of a member of the armed forces, based upon the receipt from the member and the use of a power of attorney in a way that the member would not have approved, is liable to the member in a civil action for:

- (i) depriving the member of the property or the member's interest in the property; or
- (ii) reducing the value of the property or the member's interest in the property.

(b) Subsection (1)(a)(ii) does not apply to a reduction in value of a stock or security because of normal market conditions or the exercise of a power of attorney in response to market conditions.

(2) An individual liable in a civil action pursuant to subsection (1) is liable for:

(a) damages, as provided for in Title 27, chapter 1, parts 2 and 3, for all detriment, as defined in 27-1-201, suffered by the member;

(b) punitive damages, as provided in 27-1-221, in the amount of three times the value of the property; and

(c) costs and reasonable attorney fees.

(3) As used in this section, "member of the armed forces" means an individual who is a member of the Montana national guard, a member of the federal military reserves, or a member of the active duty armed forces of the United States.

NEW SECTION. Section 2. Theft from member of armed forces based upon power of attorney.

(1) A person commits the offense of theft from a member of the armed forces based upon a power of attorney when the person exercising a power of attorney purposely or knowingly obtains or exerts control over property subject to the power of attorney, in a way that the member would not have approved, for either of the following purposes:

- (a) depriving the member of the property or the member's interest in the property; or
- (b) reducing the value of the property or the member's interest in the property.

(2) A person convicted of the offense of theft of property or an interest in property, not exceeding \$10,000 in value, from a member of the armed forces based upon a power of attorney shall be fined an amount not to exceed \$25,000 or be imprisoned in a state prison for a term of not less than 3 years and not more than 5 years, or both.

(3) A person convicted of the offense of theft of property or an interest in property, exceeding \$10,000 in value, from a member of the armed forces based upon a power of attorney shall be fined an amount not to

exceed \$100,000 or be imprisoned in a state prison for a term of not less than 5 years and not more than 10 years, or both.

(4) As used in this section, "member of the armed forces" means an individual who is a member of the Montana national guard, a member of the federal military reserves, or a member of the active duty armed forces of the United States.

NEW SECTION. **Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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