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HOUSE BILL 146

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO PROTECTION OF VULNERABLE ADULTS; ENACTING THE
PROTECTION AGAINST FINANCIAL EXPLOITATION OF VULNERABLE ADULTS
ACT; PROVIDING FOR CRIMINAL PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Protection Against Financial Exploitation of Vulnerable Adults
Act"."

SECTION 2. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Protection
Against Financial Exploitation of Vulnerable Adults Act:

A. "activity of daily living" means eating,

1 dressing, oral hygiene, bathing, grooming, mobility, toileting,
2 taking medicine or managing finances and budgeting;

3 B. "great physical harm" means physical harm of a
4 type that causes physical loss of a bodily member or organ or
5 functional loss of a bodily member or organ for a prolonged
6 period of time;

7 C. "great psychological harm" means psychological
8 harm that causes mental or emotional incapacitation for a
9 prolonged period of time or that causes extreme behavioral
10 change or severe physical symptoms that require psychological
11 or psychiatric care;

12 D. "neglect" means the lack of care and services
13 necessary to maintain a vulnerable adult's physical and mental
14 health and safety, including the provision of food, nutrition,
15 clothing, shelter, supervision, medicine and medical services;

16 E. "physical harm" means an injury to the body that
17 causes substantial pain or incapacitation; and

18 F. "vulnerable adult" means a person over the age
19 of eighteen who, due to aging, developmental disability,
20 intellectual disability, brain injury or disease, mental
21 illness or other physical condition:

22 (1) lacks the ability to care for or protect
23 one's self; or

24 (2) requires assistance with at least one
25 activity of daily living."

underscored material = new
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1 SECTION 3. A new section of the Criminal Code is enacted
2 to read:

3 "[NEW MATERIAL] FINANCIAL EXPLOITATION OF A VULNERABLE
4 ADULT--PENALTIES.--

5 A. Financial exploitation of a vulnerable adult
6 consists of:

7 (1) obtaining or using the funds, assets or
8 property of a vulnerable adult with the intent to temporarily
9 or permanently deprive the vulnerable adult of the use, benefit
10 or possession of the funds, assets or property, or to benefit
11 another person;

12 (2) misappropriating, misusing or transferring
13 without authorization money belonging to a vulnerable adult
14 from an account in which the vulnerable adult placed the funds,
15 owned the funds or was the sole contributor or beneficiary of
16 the funds. This paragraph applies to personal accounts and
17 joint accounts established for the sole benefit and use of the
18 vulnerable adult;

19 (3) appropriating, selling or transferring
20 property belonging to a vulnerable adult if the vulnerable
21 adult does not receive a substantially equivalent financial
22 value in funds, goods or services;

23 (4) making an inter vivos transfer, whether in
24 a single transaction or multiple transactions, of money or
25 property belonging to a vulnerable adult to a person who is not

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1 related to the vulnerable adult if the vulnerable adult does
2 not receive a substantially equivalent financial value in
3 funds, goods or services. A transfer of money or property
4 valued in excess of two hundred dollars (\$200) to a non-
5 relative whom the vulnerable adult has known for less than two
6 years and for which the vulnerable adult does not receive the
7 substantially equivalent financial value in funds, goods or
8 services creates the presumption that the transfer was the
9 result of financial exploitation; or

10 (5) intentionally failing to use the income
11 and assets of a vulnerable adult for necessities required for
12 the vulnerable adult's support and maintenance, resulting in
13 neglect.

14 B. Paragraph (4) of Subsection A of this section
15 does not apply to bona fide charitable contributions to
16 nonprofit organizations that qualify for tax-exempt status
17 under the federal Internal Revenue Code of 1986.

18 C. A person who commits financial exploitation of a
19 vulnerable adult as provided in Paragraphs (1) through (4) of
20 Subsection A of this section is guilty of a:

21 (1) petty misdemeanor if the value of money or
22 property is two hundred fifty dollars (\$250) or less and, upon
23 conviction, shall be sentenced pursuant to the provisions of
24 Subsection B of Section 31-19-1 NMSA 1978;

25 (2) misdemeanor if the value of money or

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1 property is over two hundred fifty dollars (\$250) but not more
2 than five hundred dollars (\$500) and, upon conviction, shall be
3 sentenced pursuant to the provisions of Subsection B of Section
4 31-19-1 NMSA 1978;

5 (3) fourth degree felony if the value of money
6 or property is over five hundred dollars (\$500) but not more
7 than two thousand five hundred dollars (\$2,500) and, upon
8 conviction, shall be sentenced pursuant to the provisions of
9 Section 31-18-15 NMSA 1978;

10 (4) third degree felony if the value of money
11 or property is over two thousand five hundred dollars (\$2,500)
12 but not more than twenty thousand dollars (\$20,000) and, upon
13 conviction, shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978; and

15 (5) second degree felony if the value of money
16 or property is over twenty thousand dollars (\$20,000) and, upon
17 conviction, shall be sentenced pursuant to the provisions of
18 Section 31-18-15 NMSA 1978.

19 D. A person who commits financial exploitation of a
20 vulnerable adult as provided in Paragraph (5) of Subsection A
21 of this section is guilty of a:

22 (1) petty misdemeanor if the neglect results
23 in no harm to the vulnerable adult and, upon conviction, shall
24 be sentenced pursuant to the provisions of Subsection B of
25 Section 31-19-1 NMSA 1978;

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1 (2) fourth degree felony if the neglect
2 results in physical harm or great psychological harm to the
3 vulnerable adult and, upon conviction, shall be sentenced
4 pursuant to the provisions of Section 31-18-15 NMSA 1978;

5 (3) third degree felony if the neglect results
6 in great physical harm to the vulnerable adult and, upon
7 conviction, shall be sentenced pursuant to the provisions of
8 Section 31-18-15 NMSA 1978; and

9 (4) second degree felony if the neglect
10 results in the death of the vulnerable adult and, upon
11 conviction, shall be sentenced pursuant to the provisions of
12 Section 31-18-15 NMSA 1978."

13 SECTION 4. APPLICABILITY.--The provisions of this act
14 shall not be construed to preclude the applicability of any
15 other provision of the civil or criminal law of this state or a
16 local government of this state that currently applies, or may
17 in the future apply, to any transaction that violates the cited
18 provisions of this act.

19 SECTION 5. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.