

1 SENATE BILL 221

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO CRIME; ENACTING THE FINANCIAL CRIMES AGAINST  
12 ELDERLY, DISABLED OR VULNERABLE ADULTS ACT; CREATING THE CRIMES  
13 OF FINANCIAL EXPLOITATION OF AN ELDERLY, DISABLED OR VULNERABLE  
14 ADULT AND UNLAWFUL USE OF A POWER OF ATTORNEY; PROVIDING  
15 PENALTIES.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
19 cited as the "Financial Crimes Against Elderly, Disabled or  
20 Vulnerable Adults Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
22 Financial Crimes Against Elderly, Disabled or Vulnerable Adults  
23 Act:

24 A. "disabled adult" means a person eighteen years  
25 of age or older who has been diagnosed with a physical or

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1 mental impairment;

2 B. "elderly adult" means a person sixty years of  
3 age or older;

4 C. "fiduciary relationship" means an agreement or  
5 arrangement that creates fiduciary duties owed from one person  
6 to another and includes the relationship between a principal  
7 and an attorney-in-fact pursuant to a power of attorney, a  
8 conservator and a protected person, a trustee and a  
9 beneficiary, a financial advisor or broker and an account owner  
10 or a representative payee and a beneficiary;

11 D. "neglect" means a failure or an omission of a  
12 caregiver to provide care, supervision and services, including  
13 food, clothing, medication and medical services and shelter,  
14 that a prudent person would deem necessary to maintain the  
15 health of an elderly, disabled or vulnerable adult and may be  
16 an isolated act or repeated conduct;

17 E. "undue influence" means an intentional use or  
18 exploitation by a person in a position of trust and confidence  
19 of that position, to obtain an unfair advantage over an  
20 elderly, disabled or vulnerable adult through an action or  
21 tactic, including emotional, psychological and legal  
22 manipulation; and

23 F. "vulnerable adult" means a person eighteen years  
24 of age or older who is unable to protect oneself from financial  
25 exploitation due to a physical or mental impairment that

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1 affects that person's judgment or behavior to the extent that  
2 the person lacks sufficient understanding or capacity to make,  
3 communicate or implement decisions regarding property, funds or  
4 resources.

5 SECTION 3. [NEW MATERIAL] FINANCIAL EXPLOITATION OF AN  
6 ELDERLY, DISABLED OR VULNERABLE ADULT--PENALTIES.--

7 A. Financial exploitation of an elderly, disabled  
8 or vulnerable adult consists of any of the following actions by  
9 a person with a fiduciary relationship with an elderly,  
10 disabled or vulnerable adult if that person acts intentionally  
11 for the person's own profit or advantage or the profit or  
12 advantage of someone else:

13 (1) depriving the elderly, disabled or  
14 vulnerable adult of that adult's own real or personal property  
15 or other financial resources, resulting in neglect of that  
16 adult; or

17 (2) temporary or permanent deprivation, use or  
18 taking of real or personal property or other financial  
19 resources of the elderly, disabled or vulnerable adult.

20 B. In the absence of a fiduciary relationship,  
21 financial exploitation of an elderly, disabled or vulnerable  
22 adult consists of any of the following actions by a person who  
23 uses undue influence, deceit, trickery, harassment, duress,  
24 force, compulsion or coercion to:

25 (1) acquire possession or control of an

1 interest in real or personal property or other financial  
2 resources of an elderly, disabled or vulnerable adult;

3 (2) induce an elderly, disabled or vulnerable  
4 adult against the adult's will to perform services for the  
5 profit or advantage of another; or

6 (3) establish a fiduciary relationship with an  
7 elderly, disabled or vulnerable adult that gives the person  
8 control of an interest in real or personal property or other  
9 financial resources of an elderly, disabled or vulnerable  
10 adult.

11 C. Evidence that a person took control, title, use  
12 or management of an elderly, disabled or vulnerable adult's  
13 property without adequate consideration shall be deemed prima  
14 facie evidence that the person intended to deprive the elderly,  
15 disabled or vulnerable adult of the property.

16 D. Whoever commits exploitation of an elderly,  
17 disabled or vulnerable adult is guilty of a:

18 (1) third degree felony for a first offense;

19 and

20 (2) second degree felony for a second or  
21 subsequent offense.

22 E. Consent of an elderly, disabled or vulnerable  
23 adult is not a valid defense for a person who knew or had  
24 reason to know that the elderly, disabled or vulnerable adult  
25 lacked the ability to reasonably comprehend the financial

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1 consequences of an action.

2 F. Nothing in this section shall be construed to  
3 impose criminal liability on a person who:

4 (1) makes a good faith effort to assist an  
5 elderly, disabled or vulnerable adult in the management of  
6 funds, assets or property, which effort fails through no fault  
7 of that person;

8 (2) makes a good faith effort to provide for  
9 the care of an elderly, disabled or vulnerable adult, but  
10 through no fault of the person, has been unable to provide that  
11 care; or

12 (3) carries out a lawful request of an  
13 elderly, disabled or vulnerable adult who is competent to make  
14 decisions on that adult's own behalf.

15 SECTION 4. [NEW MATERIAL] UNLAWFUL USE OF A POWER OF  
16 ATTORNEY.--

17 A. Unlawful use of a power of attorney consists of  
18 use of a power of attorney obtained pursuant to the Uniform  
19 Power of Attorney Act by an agent with the intent to unlawfully  
20 deprive an elderly, disabled or vulnerable adult principal of  
21 an asset or property even if the power of attorney is later  
22 determined to be invalid.

23 B. Whoever commits unlawful use of a power of  
24 attorney is guilty of a:

25 (1) third degree felony for a first offense;

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1 and

2 (2) second degree felony for a second or  
3 subsequent offense.

4 C. Consent of an elderly, disabled or vulnerable  
5 adult is not a valid defense for a person who knew or had  
6 reason to know that the elderly, disabled or vulnerable adult  
7 lacked the ability to reasonably comprehend the financial  
8 consequences of an action.

9 D. Nothing in this section shall be construed to  
10 impose criminal liability on a person who makes a good faith  
11 effort to assist an elderly, disabled or vulnerable adult in  
12 the management of funds, assets or property, which effort fails  
13 through no fault of the person.

14 SECTION 5. [NEW MATERIAL] JURISDICTION.--

15 A. State law enforcement agencies, including the  
16 office of the attorney general, and local law enforcement  
17 agencies shall have concurrent jurisdiction to investigate a  
18 report of an allegation of financial exploitation of an  
19 elderly, disabled or vulnerable adult or of unlawful use of a  
20 power of attorney.

21 B. Nothing in this section shall be construed to  
22 alter or limit the duties and responsibilities of the attorney  
23 general, the department of health, the human services  
24 department and the aging and long-term services department to  
25 investigate reports of abuse, neglect, self-neglect or

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1 exploitation of an elderly, disabled or vulnerable adult.

2 SECTION 6. [NEW MATERIAL] ADDITIONAL PENALTIES.--In  
3 addition to penalties imposed pursuant to Sections 31-18-12  
4 through 31-18-26 NMSA 1978, a person who is convicted of  
5 exploitation of an elderly, disabled or vulnerable adult or  
6 unlawful use of a power of attorney shall be sentenced to pay  
7 restitution to the victim for any loss sustained by the victim  
8 arising from that crime.

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