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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIME; ENACTING THE FINANCIAL CRIMES AGAINST ADULTS WHO ARE OLDER, VULNERABLE OR DISABLED ACT; CREATING THE CRIMES OF FINANCIAL EXPLOITATION OF AN ADULT WHO IS OLDER, VULNERABLE OR DISABLED AND UNLAWFUL USE OF A POWER OF ATTORNEY; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Financial Crimes Against Adults Who Are Older, Vulnerable or Disabled Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Financial Crimes Against Adults Who Are Older, Vulnerable or Disabled Act:

A. "adult who is disabled" means a person eighteen years of age or older with cognitive impairment or a mental,

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1 physical or developmental condition or a person who is
2 experiencing other circumstances that cause the person to be
3 susceptible to undue influence or substantially impaired in the
4 ability to provide for the person's personal or financial
5 affairs or protection, regardless of whether the person has
6 been determined to be incapacitated pursuant to Section
7 45-5-303 NMSA 1978;

8 B. "fiduciary relationship" means an agreement or
9 arrangement that creates fiduciary duties owed from one person
10 to another and includes the relationship between a principal
11 and an attorney-in-fact pursuant to a power of attorney, a
12 conservator and a protected person, a guardian who has been
13 granted financial powers by the court and a protected person, a
14 trustee and a beneficiary, a financial advisor or broker and an
15 account owner or a representative payee and a beneficiary;

16 C. "older adult" means a person of sixty years of
17 age or older who is targeted because of age and is disabled or
18 vulnerable;

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

25 E. "vulnerable adult" means a person eighteen years

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1 of age or older who is unable to protect oneself from financial
2 exploitation due to a physical or mental impairment or other
3 circumstances that affect that person's judgment or behavior to
4 the extent that the person lacks sufficient understanding or
5 capacity to make, communicate or implement decisions regarding
6 property, funds or resources, regardless of whether the person
7 has been determined to be incapacitated pursuant to Section
8 45-5-303 NMSA 1978.

9 SECTION 3. [NEW MATERIAL] FINANCIAL EXPLOITATION OF AN
10 ADULT WHO IS OLDER, VULNERABLE OR DISABLED--PENALTIES.--

11 A. Financial exploitation of an adult who is older,
12 vulnerable or disabled consists of any of the following actions
13 by a person with a fiduciary relationship with an adult who is
14 older, vulnerable or disabled if that person acts intentionally
15 for the person's own profit or advantage or the profit or
16 advantage of someone else:

17 (1) depriving an adult who is older,
18 vulnerable or disabled of that adult's own real or personal
19 property or other financial resources; or

20 (2) temporary or permanent deprivation, use or
21 taking of real or personal property or other financial
22 resources of an adult who is older, vulnerable or disabled.

23 B. In the absence of a fiduciary relationship,
24 financial exploitation of an adult who is older, vulnerable or
25 disabled consists of any of the following actions by a person

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1 who uses undue influence, deceit, trickery, harassment, duress,
2 force, compulsion or coercion to:

3 (1) acquire possession or control of an
4 interest in real or personal property or other financial
5 resources of an adult who is older, vulnerable or disabled;

6 (2) induce an adult who is older, vulnerable
7 or disabled against the adult's will to perform services for
8 the profit or advantage of another; or

9 (3) establish a fiduciary relationship with an
10 adult who is older, vulnerable or disabled that gives the
11 person control of an interest in real or personal property or
12 other financial resources of an adult who is older, vulnerable
13 or disabled.

14 C. Evidence that a person took control, title, use
15 or management of property of an adult who is older, vulnerable
16 or disabled without adequate consideration shall be deemed
17 prima facie evidence that the person intended to deprive the
18 adult who is older, vulnerable or disabled of the property.

19 D. Whoever commits financial exploitation of an
20 adult who is older, vulnerable or disabled is guilty of a:

21 (1) third degree felony for a first offense;
22 and

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

25 E. Consent of an adult who is older, vulnerable or

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1 disabled is not a valid defense for a person who knew or had
2 reason to know that the adult who is older, vulnerable or
3 disabled lacked the ability to reasonably comprehend the
4 financial consequences of an action.

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

7 (1) makes a good faith effort to assist an
8 adult who is older, vulnerable or disabled in the management of
9 funds, assets or property, which effort fails through no fault
10 of that person;

11 (2) makes a good faith effort to provide for
12 the care of an adult who is older, vulnerable or disabled, but
13 through no fault of the person, has been unable to provide that
14 care; or

15 (3) carries out a lawful request of an adult
16 who is older, vulnerable or disabled who is competent to make
17 decisions on that adult's own behalf.

18 SECTION 4. [NEW MATERIAL] UNLAWFUL USE OF A POWER OF
19 ATTORNEY.--

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

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1 B. Whoever commits unlawful use of a power of
2 attorney is guilty of a:
3 (1) third degree felony for a first offense;
4 and
5 (2) second degree felony for a second or
6 subsequent offense.

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

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

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

18 A. State law enforcement agencies, including the
19 office of the attorney general, and local law enforcement
20 agencies shall have concurrent jurisdiction to investigate a
21 report of an allegation of financial exploitation of an adult
22 who is older, vulnerable or disabled or of unlawful use of a
23 power of attorney.

24 B. Nothing in this section shall be construed to
25 alter or limit the duties and responsibilities of the attorney

1 general, the department of health, the human services
2 department and the aging and long-term services department to
3 investigate reports of abuse, neglect, self-neglect or
4 exploitation of an adult who is older, vulnerable or disabled.

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

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