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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO FINANCIAL EXPLOITATION; ENACTING THE FINANCIAL EXPLOITATION ACT; CREATING A CIVIL CAUSE OF ACTION.

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 Exploitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Financial Exploitation Act:

A. "caregiver" means a person who has been entrusted with or has responsibility for the care of an eligible adult or the eligible adult's property; a court-appointed guardian or conservator; an adult living in the same household as the eligible adult; a health care provider; or an employee or volunteer of an adult daycare, assisted living or residential care facility, group home, nursing home, hospital,

underscored material = new
~~[bracketed material]~~ = delete

1 mental health treatment center or continuing care community or
2 a service provider of such entity;

3 B. "confidential relationship" means a relationship
4 of confidence and trust between an eligible adult and another
5 person;

6 C. "eligible adult" means a person eighteen years
7 of age or older with cognitive impairment or a mental, physical
8 or developmental condition or other circumstance that causes
9 the person to be susceptible to undue influence or
10 substantially impaired in the ability to provide adequately for
11 the person's personal or financial affairs or protection,
12 regardless of whether the person has been adjudicated to be an
13 incapacitated person pursuant to Section 45-5-304 or 45-5-407
14 NMSA 1978;

15 D. "fiduciary relationship" means an agreement or
16 arrangement that creates fiduciary duties owed from one person
17 to another;

18 E. "financial exploitation" means:

19 (1) the wrongful or unauthorized taking,
20 conversion, withholding, appropriation or use of an eligible
21 adult's assets; or

22 (2) an act or omission taken by a trusted
23 person to obtain the benefit, control or use of an eligible
24 adult's assets through the use of deception, intimidation or
25 undue influence;

underscoring material = new
~~[bracketed material] = delete~~

1 F. "transaction" means an agreement; contract;
2 conveyance; deed; encumbrance; gift; guarantee; loan; mortgage;
3 pledge; purchase; sale; title transfer; transfer of money,
4 trust, security or other financial asset or real or personal
5 property; or withdrawal from a financial, investment or
6 securities account or changes to ownership on such account, but
7 excludes wills, transfer on death beneficiary designations or
8 instruments effective upon the death of an eligible adult;

9 G. "trusted person" means:

10 (1) a caregiver, health care or mental health
11 care provider;

12 (2) a person upon whom an eligible adult is
13 dependent and with whom the eligible adult has a confidential
14 or fiduciary relationship; or

15 (3) a person in a position of authority with
16 the eligible adult; and

17 H. "undue influence" means excessive persuasion or
18 domination of the decision-making process of an eligible adult
19 by a trusted person that causes an eligible adult to consent to
20 a transaction or refrain from consenting to a transaction that
21 would reasonably be expected to result in financial harm to the
22 eligible adult, including controlling the eligible adult's
23 interaction with others, access to information or necessities
24 of life; using affection, intimidation or coercion; or
25 initiating changes in the eligible adult's personal or property

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1 rights in haste, secrecy or at inappropriate times and places.

2 SECTION 3. [NEW MATERIAL] CIVIL REMEDIES.--

3 A. An eligible adult, an attorney-in-fact or a
4 conservator who has been granted financial powers by the court
5 or a temporary conservator acting for or on behalf of an
6 eligible adult may commence a civil action in a court of
7 competent jurisdiction against a person suspected of
8 financially exploiting an eligible adult in order to:

- 9 (1) return property;
- 10 (2) stop or enjoin a transaction;
- 11 (3) return any profit received from a
12 transaction;
- 13 (4) seek compensatory damages for a
14 transaction; or
- 15 (5) void or rescind a transaction.

16 B. To prevail on a claim made pursuant to this
17 section, the plaintiff shall prove by a preponderance of the
18 evidence that financial exploitation occurred.

19 C. Punitive damages may be awarded when a plaintiff
20 proves that the defendant committed financial exploitation and:

- 21 (1) acted with knowledge that the transaction
22 was wrongful;
- 23 (2) acted in indifference or reckless
24 disregard for the financial interests of the eligible adult
25 that resulted in financial harm to the eligible adult; and

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underscoring material = new
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1 (3) failed to cure the alleged financial
2 exploitation within sixty days of receiving notice of intent to
3 seek relief from the plaintiff.

4 D. If a plaintiff prevails against a defendant on a
5 financial exploitation claim, the plaintiff shall recover
6 reasonable attorney fees and costs incurred while pursuing such
7 relief.

8 E. A remedy obtained pursuant to this section shall
9 not limit the right, title and interest of a good faith
10 purchaser, mortgagee, holder of a security interest or other
11 third party who obtains an interest in property transferred
12 from an eligible adult.

13 F. Relief obtained pursuant to this section shall
14 not affect the value of a mortgage.

15 G. Nothing in this section shall limit any other
16 cause of action under the laws of this state.

17 H. When a plaintiff dies during the course of a
18 civil proceeding initiated pursuant to this section, the
19 personal representative of the plaintiff's estate may continue
20 with the proceeding; provided that no proceeding made pursuant
21 to this section shall be initiated after the plaintiff's death.