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FISCAL IMPACT REPORT

SPONSOR STBTC **ORIGINAL DATE** 03/02/21 **LAST UPDATED** 03/09/21 **HB** _____
SHORT TITLE Financial Exploitation Act **SB** 189/STBTCS
ANALYST Lobaugh

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			See Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long Term Services Department (ALTSD)
 Department of Health (DOH)
 New Mexico Attorney General (NMAG)
 Regulation and Licensing Department (RLD)

Responses not Received From

Administrative Office of the Courts (AOC)
 Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

The Senate Tax, Business, and Transportation Committee Substitute for Senate Bill 189 (SB189/STBTCS) creates a new Financial Exploitation Act in state statute. The act defines “financial exploitation” as an act or omission that takes control of an eligible adult’s assets without permission or through the use of deception, intimidation, or undue influence. Eligible adults are defined in SB189/STBTCS as adults over the age of 18 years with a mental, physical, or developmental condition or who is experiencing other circumstances causing them to be susceptible to undue influence.

SB189/STBTCS authorizes an eligible adult or a person legally acting on behalf of an eligible adult (such as an attorney-in-fact, conservator, court-approved guardian, temporary conservator,

or trustee) to commence a civil action against a person suspected of financially exploiting an eligible adult. SB189/STBTCS authorizes a personal representative of the plaintiff's estate to continue with a civil claim of financial exploitation if a plaintiff dies during the civil proceeding.

SB189/STBTCS specifies (1) the remedies that may be sought in civil claims of financial exploitation, (2) that civil claims of financial exploitation shall be decided based on a preponderance of the evidence, and (3) the conditions under which a court may award punitive damages to a plaintiff.

If an eligible adult's property was transferred to a third party purchaser who was acting in good faith, SB189/STBTCS does not limit a third party's right, title, or interest in the property transferred from the eligible adult.

SB189/STBTCS does not have a specified effective date or an emergency clause, meaning that SB189/STBTCS would take effect 90 days after the Legislature adjourns.

FISCAL IMPLICATIONS

SB189/STBTCS does not include an appropriation. By creating a new category of civil action in state law, SB189/STBTCS could potentially increase caseloads in courts which, in turn, could necessitate additional resources to the courts to handle increased caseloads. However, specific quantitative estimates of this potential fiscal impact are not available from state agency analyses of either SB189/STBTCS or related legislation (SB221) from this session creating crimes of financial exploitation of vulnerable adults in state law.

SIGNIFICANT ISSUES

The state Aging and Long-Term Services Department (ALTSD), in an analysis of SB221 stated that it substantiated a total of 121 allegations of exploitation in FY20.

ADMINISTRATIVE ISSUES

The Department of Health (DOH) has the authority to enforce rules protecting New Mexicans receiving health care in a licensed facility or home and community-based Medicaid waiver program (community program). DOH indicates that the definitions in SB189/STBTCS do not align with the definitions in its administrative rules. DOH would need to update its administrative rules to align with SB189/STBTCS relating to civil cases involving eligible adults in a licensed health facility or community program under DOH jurisdiction.

RELATIONSHIP

SB189/STBTCS relates to SB221, Financial Crimes Against the Vulnerable, which would establish a new act of state law creating the crimes of financial exploitation of elderly, disabled, or vulnerable adults and the unlawful use of a power of attorney. SB189/STBTCS uses the term "eligible adults" whereas SB221 uses the term "vulnerable adults" to refer to adults who may be subject to undue influence and financial exploitation.