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FISCAL IMPACT REPORT

SPONSOR <u>Duhigg/Wirth/Chandler</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/27/2023</u>
SHORT TITLE <u>Financial Exploitation Act</u>	BILL NUMBER <u>Senate Bill 119</u>
	ANALYST <u>Gray</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 118

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Aging and Long-Term Services Department (ALTSD)
 Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 119

Senate Bill 119 (SB119) contemplates creating a Financial Exploitation Act. The proposed Act includes definitions for caregiver, confidential relationship, eligible adult, fiduciary relationship, financial exploitation, transaction, trusted person, and undue influence.

SB119 would allow an eligible adult, attorney-in-fact, or a conservator or temporary conservator to pursue civil action against a person suspected of financially exploiting an eligible adult, defined as those with cognitive impairment; mental, physical, or developmental conditions; or other circumstances that cause them to “be susceptible to undue influence” or to be “substantially impaired” in their ability to care for their affairs.

SB119 provides allowable remedies, including:

- Return of property,
- Stop or enjoin a transaction,
- Return any profit received from a transaction,

- Seek compensatory damages for a transaction, or
- Void or rescind a transaction.

The plaintiff in the civil suit must prove by a preponderance of the evidence that financial exploitation occurred. Punitive damages may be awarded. SB119 provides that remedies obtained would not limit the rights or interests of third parties, acting in good faith, who obtained an interest in property transferred from an eligible adult.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There are no anticipated fiscal implications.

SIGNIFICANT ISSUES

The Long-Term Care Ombudsman Program, within the New Mexico Aging and Long-Term Services Department, provided a positive assessment of the proposed legislation, noting that the bill may specifically benefit individuals living in long-term care and residential care settings. ALTSD's Adult Protective Services division notes that individuals with cognitive or developmental conditions are often unable to understand or appreciate the risks involved in financial transactions and fiduciary relationships, and notes that exploitation cases are rarely criminally prosecuted, take years to resolve, and seldom result in a victim receiving restitution, leaving the vulnerable adult financially deprived in the criminal process. SB119 proposal to implement civil action provides another avenue for remedies.

The Division of Health Improvement, Incident Management Bureau (DHI-IMB) has authority to investigate exploitation of all individuals receiving developmental disability funds through waivers and other means. For substantiated cases, DHI-IMB requires waiver providers to create a corrective and preventive action plan which includes reimbursement of the victim and other actions taken to prevent future instances of exploitation. DHI-IMB refers egregious cases to law enforcement, the Human Services Department, and Attorney General's Medicaid Fraud Units for investigation and action.

There is an existing law, Protecting Vulnerable Adults from Financial Exploitation, Section 58-13D-1 et seq. NMSA 1978, which covers financial advisors who must report unusual financial transactions involving vulnerable adults. SB119 use many of the same terms from this law, and it may clarify the proposed language if language utilized the same terms and same definitions as found in Section 58-13D-2 NMSA 1978. The same issues are present with respect to Section 30-47-6 NMSA 1978, which protects residents in care facilities from exploitation and in doing so uses a different definition of exploitation than used in SB119.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to Senate Bill 118, which proposes to criminalize similar conduct.

BG/rl/ne