

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 146

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO PROTECTION OF VULNERABLE ELDERS; ENACTING THE
PROTECTION AGAINST FINANCIAL EXPLOITATION OF VULNERABLE ELDERS
ACT; PROVIDING FOR CRIMINAL PENALTIES.

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

SECTION 1. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Protection Against Financial Exploitation of Vulnerable Elders
Act"."

SECTION 2. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Protection
Against Financial Exploitation of Vulnerable Elders Act:

A. "exploitation" means an unjust or improper use

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underscored material = new
[bracketed material] = delete

1 of a vulnerable elder's money or property for another person's
2 profit or advantage, pecuniary or otherwise; and

3 B. "vulnerable elder" means a person who has
4 attained the age of sixty-five years and who, due to aging,
5 lacks the ability to care for or protect that person's own self
6 from exploitation."

7 SECTION 3. A new section of the Criminal Code is enacted
8 to read:

9 "[NEW MATERIAL] FINANCIAL EXPLOITATION OF A VULNERABLE
10 ELDER--PENALTIES.--

11 A. Financial exploitation of a vulnerable elder
12 consists of:

13 (1) knowingly and willfully obtaining or using
14 the funds, assets or property of a vulnerable elder with the
15 intent to defraud the elder; or

16 (2) knowingly and willfully making an inter
17 vivos transfer with the intent to defraud the vulnerable elder,
18 whether in a single transaction or multiple transactions, of
19 money or property belonging to a vulnerable elder to a person
20 who is not related to the vulnerable elder if the vulnerable
21 elder does not receive a substantially equivalent financial
22 value in funds, goods or services. Any transfer of money or
23 property valued in excess of five hundred dollars (\$500) from a
24 vulnerable elder to a person who is not related to the
25 vulnerable elder and whom the vulnerable elder has known for

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1 less than two years and for which the vulnerable elder does not
2 receive the substantially equivalent financial value in funds,
3 goods or services shall be prima facie evidence that the
4 transfer was the result of financial exploitation. For the
5 purposes of this paragraph, a person who is not related to a
6 vulnerable elder means a person who is not the spouse of a
7 vulnerable elder or is not, by blood, marriage or legal
8 adoption, a parent, grandparent, great-grandparent, child,
9 grandchild, great-grandchild, brother, sister, niece, nephew,
10 aunt or uncle of a vulnerable elder.

11 B. A person who commits financial exploitation of a
12 vulnerable elder as provided in Subsection A of this section is
13 guilty of a:

14 (1) petty misdemeanor if the value of money or
15 property is two hundred fifty dollars (\$250) or less and, upon
16 conviction, shall be sentenced pursuant to the provisions of
17 Subsection B of Section 31-19-1 NMSA 1978;

18 (2) misdemeanor if the value of money or
19 property is over two hundred fifty dollars (\$250) but not more
20 than five hundred dollars (\$500) and, upon conviction, shall be
21 sentenced pursuant to the provisions of Subsection A of Section
22 31-19-1 NMSA 1978;

23 (3) fourth degree felony if the value of money
24 or property is over five hundred dollars (\$500) but not more
25 than two thousand five hundred dollars (\$2,500) and, upon

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1 conviction, shall be sentenced pursuant to the provisions of
2 Section 31-18-15 NMSA 1978;

3 (4) third degree felony if the value of money
4 or property is over two thousand five hundred dollars (\$2,500)
5 but not more than twenty thousand dollars (\$20,000) and, upon
6 conviction, shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978; and

8 (5) second degree felony if the value of money
9 or property is over twenty thousand dollars (\$20,000) and, upon
10 conviction, shall be sentenced pursuant to the provisions of
11 Section 31-18-15 NMSA 1978."

12 SECTION 4. APPLICABILITY.--The provisions of this act
13 shall not be construed to preclude the applicability of any
14 other provision of the civil or criminal law of this state or a
15 local government of this state that currently applies, or may
16 in the future apply, to any transaction that violates the cited
17 provisions of this act.