

1 SENATE BILL 118

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Michael Padilla and Peter Wirth and Marian Matthews

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10 AN ACT

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

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

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

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

24 A. "adult who is disabled" means a person eighteen  
25 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 45-5-304 NMSA 1978 or Subsection I of Section 45-5-407 NMSA  
8 1978;

9 B. "adult who is vulnerable" means a person  
10 eighteen years of age or older who is unable to protect oneself  
11 from financial exploitation due to a physical or mental  
12 impairment or other circumstances that affect that person's  
13 judgment or behavior to the extent that the person lacks  
14 sufficient understanding or capacity to make, communicate or  
15 implement decisions regarding property, funds or resources,  
16 regardless of whether the person has been determined to be  
17 incapacitated pursuant to Section 45-5-304 NMSA 1978 or  
18 Subsection I of Section 45-5-407 NMSA 1978;

19 C. "fiduciary relationship" means an agreement or  
20 arrangement that creates fiduciary duties owed from one person  
21 to another and includes the relationship between a principal  
22 and an attorney-in-fact pursuant to a power of attorney, a  
23 conservator and a protected person, a guardian who has been  
24 granted financial powers by the court and a protected person, a  
25 trustee and a beneficiary, a financial advisor or broker and an

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1 account owner or a representative payee and a beneficiary; and

2 D. "undue influence" means excessive persuasion or  
3 domination of the decision-making process of an adult who is  
4 vulnerable or disabled by a trusted person that causes an adult  
5 who is vulnerable or disabled to consent to a transaction or  
6 refrain from consenting to a transaction that would reasonably  
7 be expected to result in financial harm to the adult who is  
8 vulnerable or disabled, including controlling the interaction  
9 with others of the adult who is vulnerable or disabled, access  
10 to information or necessities of life, using affection,  
11 intimidation or coercion, or initiating changes in the personal  
12 or property rights of the adult who is vulnerable or disabled  
13 in haste, secrecy or at inappropriate times and places.

14 SECTION 3. [NEW MATERIAL] FINANCIAL EXPLOITATION OF AN  
15 ADULT WHO IS VULNERABLE OR DISABLED--PENALTIES.--

16 A. Financial exploitation of an adult who is  
17 vulnerable or disabled consists of any of the following actions  
18 by a person with a fiduciary relationship with an adult who is  
19 vulnerable or disabled if that person acts intentionally for  
20 the person's own profit or advantage or the profit or advantage  
21 of someone else by temporarily or permanently depriving, using  
22 or taking of real or personal property or other financial  
23 resources of an adult who is vulnerable or disabled without  
24 providing adequate consideration to that adult.

25 B. In the absence of a fiduciary relationship,

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1 financial exploitation of an adult who is vulnerable or  
2 disabled consists of any of the following actions by a person  
3 who uses undue influence, deceit, trickery, harassment, duress,  
4 force, compulsion or coercion to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 later determined to be invalid.

2 B. Whoever commits unlawful use of a power of  
3 attorney is guilty of a:

4 (1) third degree felony for a first offense;  
5 and

6 (2) second degree felony for a second or  
7 subsequent offense.

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

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

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

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

25 B. Nothing in this section shall be construed to

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

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