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SENATE BILL

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

INTRODUCED BY

Michael Padilla

AN ACT

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

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 Crimes Against Adults Who Are Vulnerable or Disabled Act".

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

A. "adult who is disabled" means a person eighteen years of age or older with cognitive impairment or a mental,

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.