

6712

I N S E N A T E

March 12, 2012

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the penal law and the social services law, in relation to preventing financial exploitation of the elderly

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph and subdivision 1 of section 260.31
2 of the penal law, the opening paragraph as added by chapter 381 of the
3 laws of 1998, subdivision 1 as amended and such section as renumbered by
4 chapter 14 of the laws of 2010, are amended to read as follows:
5 For the purpose of sections 155.05, 260.32 and 260.34 of this article,
6 the following definitions shall apply:
7 1. "Caregiver" means a person who (i) assumes responsibility for the
8 care of a vulnerable elderly person, or an incompetent or physically
9 disabled person pursuant to a court order; or (ii) VOLUNTARILY ASSUMES
10 RESPONSIBILITY FOR THE CARE OF A VULNERABLE ELDERLY PERSON OR AN INCOM-
11 PETENT OR PHYSICALLY DISABLED PERSON; OR (III) receives monetary or
12 other valuable consideration for providing care for a vulnerable elderly
13 person, or an incompetent or physically disabled person.
14 S 2. Subdivision 2 of section 155.05 of the penal law is amended by
15 adding a new paragraph (f) to read as follows:
16 (F) BY FINANCIAL EXPLOITATION OF THE VULNERABLE ELDERLY OR INCOMPETENT
17 OR PHYSICALLY DISABLED PERSON.
18 (I) A PERSON OBTAINS PROPERTY BY FINANCIAL EXPLOITATION OF A VULNER-
19 ABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON WHEN, WHILE
20 IN A BUSINESS RELATIONSHIP OR CAREGIVER STATUS WITH A VULNERABLE ELDERLY
21 PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, HE OR SHE KNOWINGLY
22 OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE A VULNERABLE ELDERLY
23 PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S PROPERTY WITH
24 THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE VULNERABLE ELDERLY
25 PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON OF THE USE, BENEFIT
26 OR POSSESSION OF THE PROPERTY, OR TO BENEFIT HIMSELF OR HERSELF OR A
27 THIRD PERSON.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (II) A PERSON OBTAINS PROPERTY BY FINANCIAL EXPLOITATION OF A VULNER-
2 ABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON WHEN, WHILE
3 IN A BUSINESS RELATIONSHIP OR CAREGIVER STATUS WITH A VULNERABLE ELDERLY
4 PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, HE OR SHE KNOWINGLY
5 OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE CASH, SECURITIES OR OTHER
6 PROPERTY FROM A DEPOSIT ACCOUNT AS DESCRIBED IN SECTION SIX HUNDRED
7 SEVENTY-EIGHT OF THE BANKING LAW FOR ANY OTHER PURPOSE BESIDES FOR THE
8 BENEFIT OF THE ORIGINAL DEPOSITOR WHERE THE VULNERABLE ELDERLY PERSON OR
9 INCOMPETENT OR PHYSICALLY DISABLED PERSON IS THE ORIGINAL DEPOSITOR OF
10 THE ACCOUNT. FOR PURPOSES OF THIS PART, ANY BANKING ORGANIZATION OR
11 FOREIGN BANKING CORPORATION OR AGENT OF THE ORGANIZATION OR FOREIGN
12 BANKING CORPORATION THAT RELEASES CASH, SECURITIES OR OTHER PROPERTY TO
13 AN ADDITIONAL ACCOUNT HOLDER SHALL NOT BE CULPABLE OF ANY OFFENSE BY THE
14 SOLE ACT OF RELEASING CASH, SECURITIES OR OTHER PROPERTY TO AN ADDI-
15 TIONAL ACCOUNT HOLDER.

16 S 3. Section 155.15 of the penal law is amended by adding a new subdi-
17 vision 3 to read as follows:

18 3. IN ANY PROSECUTION FOR LARCENY BY FINANCIAL EXPLOITATION OF A
19 VULNERABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, IT IS
20 AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT ACQUIRED EXPRESS CONSENT FROM
21 THE VULNERABLE OR INCOMPETENT OR PHYSICALLY DISABLED PERSON TO OBTAIN OR
22 USE THE VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISA-
23 BLED PERSON'S PROPERTY FOR HIS OR HER OWN BENEFIT OR THE BENEFIT OF A
24 THIRD PERSON. CONSENT MUST HAVE BEEN GIVEN BY THE VULNERABLE ELDERLY
25 PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON PRIOR TO LOSING THE
26 ABILITY TO ADEQUATELY CARE FOR HIM OR HERSELF OR BY A PERSON WHO HOLDS A
27 POWER OF ATTORNEY OR SIMILAR AUTHORITY OVER THE VULNERABLE ELDERLY OR
28 INCOMPETENT OR PHYSICALLY DISABLED PERSON AT ANY TIME PRIOR TO THE
29 DEFENDANT OBTAINING OR USING OR ATTEMPTING TO OBTAIN OR USE THE VULNER-
30 ABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S
31 PROPERTY.

32 S 4. Subdivision 5 of section 473 of the social services law, as added
33 by chapter 395 of the laws of 1995, is amended to read as follows:

34 5. Whenever a social services official, or his or her designee author-
35 ized or required to determine the need for, or to provide or arrange for
36 the provision of protective services to adults in accordance with the
37 provisions of this title has a reason to believe that a criminal offense
38 has been committed, as defined in the penal law, against a person for
39 whom the need for such services is being determined or to whom such
40 services are being provided or arranged, the social services official or
41 his or her designee must report this information to the appropriate
42 police or sheriff's department and the district attorney's office [when
43 such office has requested such information be reported by a social
44 services official or his or her designee].

45 S 5. This act shall take effect on the first of November next succeed-
46 ing the date on which it shall have become a law.