

4163

2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

Introduced by M. of A. CLARK, COLTON, ORTIZ -- Multi-Sponsored by -- M. of A. CYMBROWITZ, DIAZ, GALEF, HOOPER, JACOBS, MAGEE, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to financial exploitation of the elderly and disabled

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

- 1 Section 1. Section 155.00 of the penal law is amended by adding four
2 new subdivisions 10, 11, 12 and 13 to read as follows:
3 10. "ELDERLY" MEANS ANY PERSON WHO IS SIXTY YEARS OF AGE OR OLDER AND
4 IS SUFFERING FROM A DISEASE OR INFIRMITY ASSOCIATED WITH ADVANCED AGE,
5 WHICH IS MANIFESTED BY PHYSICAL, MENTAL OR EMOTIONAL DYSFUNCTIONING TO
6 THE EXTENT THAT SUCH PERSON IS INCAPABLE OF AVOIDING OR PREVENTING THE
7 COMMISSION OF A LARCENY AGAINST HIMSELF OR HERSELF.
8 11. "DISABLED" MEANS ANY PERSON WHO SUFFERS FROM A PERMANENT PHYSICAL
9 OR MENTAL IMPAIRMENT, AS A RESULT OF A DISEASE, INJURY, FUNCTIONAL
10 DISORDER OR CONGENITAL CONDITION, TO THE EXTENT THAT SUCH PERSON IS
11 INCAPABLE OF AVOIDING OR PREVENTING THE COMMISSION OF A LARCENY AGAINST
12 HIMSELF OR HERSELF.
13 12. "PERSON IN A POSITION OF TRUST" MEANS A PERSON WHO:
14 (A) IS THE PARENT, SPOUSE, ADULT CHILD OR OTHER RELATIVE BY BLOOD OR
15 AFFINITY OF AN ELDERLY OR DISABLED PERSON; OR
16 (B) IS A JOINT TENANT OR TENANT IN COMMON WITH AN ELDERLY OR DISABLED
17 PERSON; OR
18 (C) HAS A FIDUCIARY OBLIGATION TO AN ELDERLY OR DISABLED PERSON; OR
19 (D) RECEIVES MONETARY OR OTHER VALUABLE CONSIDERATION FOR PROVIDING
20 CARE FOR THE ELDERLY OR DISABLED PERSON; OR
21 (E) LIVES WITH OR PROVIDES SOME COMPONENT OF HOME CARE SERVICES ON A
22 CONTINUING BASIS TO THE ELDERLY OR DISABLED PERSON INCLUDING, BUT NOT
23 LIMITED TO, A NEIGHBOR OR FRIEND WHO DOES NOT PROVIDE SUCH SERVICES BUT
24 HAS ACCESS TO THE ELDERLY OR DISABLED PERSON BASED ON SUCH RELATIONSHIP.

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

LBD06022-01-9

1 13. "INTIMIDATION" MEANS THE COMMUNICATION TO AN ELDERLY OR DISABLED
2 PERSON THAT HE OR SHE WILL BE DEPRIVED OF FOOD, NUTRITION, SHELTER,
3 MEDICATION, MEDICAL CARE OR MEDICAL TREATMENT.

4 S 2. Subdivision 2 of section 155.05 of the penal law is amended by
5 adding a new paragraph (f) to read as follows:

6 (F) BY FINANCIAL EXPLOITATION OF THE ELDERLY OR DISABLED.

7 (I) A PERSON OBTAINS PROPERTY BY FINANCIAL EXPLOITATION OF THE ELDERLY
8 OR DISABLED, WHEN BEING A PERSON IN A POSITION OF TRUST, HE OR SHE
9 COMPELS OR INDUCES AN ELDERLY OR DISABLED PERSON TO DELIVER SUCH PROPER-
10 TY TO HIMSELF OR HERSELF OR TO A THIRD PERSON BY MEANS OF FRAUD, FALSE
11 PROMISE, EXTORTION OR INTIMIDATION.

12 (II) NO PROVISION OF THIS PARAGRAPH SHALL BE DEEMED TO IMPOSE CRIMINAL
13 LIABILITY UPON ANY PERSON WHO IN GOOD FAITH SEEKS TO ASSIST AN ELDERLY
14 OR DISABLED PERSON IN THE MANAGEMENT OF HIS OR HER PROPERTY, BUT THROUGH
15 NO FAULT OF SUCH PERSON IS UNABLE TO ASSIST THE ELDERLY OR DISABLED
16 PERSON.

17 (III) IT SHALL BE NO DEFENSE TO ANY PROSECUTION FOR LARCENY BY MEANS
18 OF FINANCIAL EXPLOITATION OF THE ELDERLY OR DISABLED THAT THE DEFENDANT
19 DID NOT KNOW THE FACTS AND CONDITIONS RESPONSIBLE FOR MAKING THE VICTIM
20 AN ELDERLY OR DISABLED PERSON.

21 S 3. This act shall take effect on the first of November next succeed-
22 ing the date on which it shall have become a law.