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I N  A S S E M B L Y

May 25, 2010

Introduced by M. of A. McDONOUGH -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the social services law, the elder law and the state finance law, in relation to establishing the "prevention of financial exploitation of the elderly act"; and to repeal title 13 of article 5 of this social services law relating to state heating fuel crisis assistance

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

Section 1. This act shall be known and maybe cited as the "prevention of financial exploitation of the elderly act".

S 2. Section 155.00 of the penal law is amended by adding four new subdivisions 10, 11, 12 and 13 to read as follows:

10. "ELDERLY" MEANS ANY PERSON WHO IS SIXTY YEARS OF AGE OR OLDER AND IS SUFFERING FROM A DISEASE OR INFIRMITY ASSOCIATED WITH ADVANCED AGE, WHICH IS MANIFESTED BY PHYSICAL, MENTAL OR EMOTIONAL DYSFUNCTIONING TO THE EXTENT THAT SUCH PERSON IS INCAPABLE OF AVOIDING OR PREVENTING THE COMMISSION OF A LARCENY AGAINST HIMSELF OR HERSELF.

11. "DISABLED" MEANS ANY PERSON WHO SUFFERS FROM A PERMANENT PHYSICAL OR MENTAL IMPAIRMENT, AS A RESULT OF A DISEASE, INJURY, FUNCTIONAL DISORDER OR CONGENITAL CONDITION, TO THE EXTENT THAT SUCH PERSON IS INCAPABLE OF AVOIDING OR PREVENTING THE COMMISSION OF A LARCENY AGAINST HIMSELF OR HERSELF.

12. "PERSON IN A POSITION OF TRUST" MEANS A PERSON WHO:

(A) IS THE PARENT, SPOUSE, ADULT CHILD OR OTHER RELATIVE BY BLOOD OR AFFINITY OF AN ELDERLY OR DISABLED PERSON; OR

(B) IS A JOINT TENANT OR TENANT IN COMMON WITH AN ELDERLY OR DISABLED PERSON; OR

(C) HAS A FIDUCIARY OBLIGATION TO AN ELDERLY OR DISABLED PERSON; OR

(D) RECEIVES MONETARY OR OTHER VALUABLE CONSIDERATION FOR PROVIDING CARE FOR THE ELDERLY OR DISABLED PERSON; OR

(E) LIVES WITH OR PROVIDES SOME COMPONENT OF HOME CARE SERVICES ON A CONTINUING BASIS TO THE ELDERLY OR DISABLED PERSON INCLUDING, BUT NOT

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

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LIMITED TO, A NEIGHBOR OR FRIEND WHO DOES NOT PROVIDE SUCH SERVICES BUT HAS ACCESS TO THE ELDERLY OR DISABLED PERSON BASED ON SUCH RELATIONSHIP.

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

S 3. Subdivision 2 of section 155.05 of the penal law is amended by adding a new paragraph (f) to read as follows:

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

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

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

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

S 4. The opening paragraph of section 473-b of the social services law, as added by chapter 523 of the laws of 1984, is amended to read as follows:

1. THE OFFICE SHALL ESTABLISH, MAINTAIN AND OPERATE A SINGLE STATEWIDE TOLL-FREE TELEPHONE NUMBER FOR THE PURPOSE OF RECEIVING TELEPHONE CALLS ALLEGING FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-THREE OF THIS TITLE.

2. Any person who in good faith believes that a person eighteen years of age or older may be an endangered adult or in need of protective or other services, pursuant to this article, and who, based on such belief either:

S 5. Title 13 of article 5 of the social services law is REPEALED and a new title 13 is added to read as follows:

## TITLE 13
## MANDATORY REPORTING OF FINANCIAL EXPLOITATION OF THE ELDERLY

SECTION 370-AA. MANDATORY REPORTING OF FINANCIAL EXPLOITATION OF THE ELDERLY.

S 370-AA. MANDATORY REPORTING OF FINANCIAL EXPLOITATION OF THE ELDERLY. 1. THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR CAUSE A REPORT TO BE MADE IN ACCORDANCE WITH THIS SECTION WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A PERSON AGED SIXTY-TWO YEARS OR OLDER COMING BEFORE THEM IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY IS A VICTIM OF FINANCIAL EXPLOITATION IN VIOLATION OF SECTION 155.05 OF THE PENAL LAW: ANY PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT; SURGEON; MEDICAL EXAMINER; CORONER; DENTIST; DENTAL HYGIENIST; OSTEOPATH; OPTOMETRIST; CHIROPRACTOR; PODIATRIST; RESIDENT; INTERN; PSYCHOLOGIST; REGISTERED NURSE; HOSPITAL OR NURSING HOME PERSONNEL ENGAGED IN THE ADMISSION, EXAMINATION, CARE, OR TREATMENT OF PERSONS; SOCIAL SERVICES WORKER; SOCIAL WORKER; MENTAL HEALTH PROFESSIONAL; SUBSTANCE ABUSE COUNSELOR; ALCOHOLISM COUNSELOR; PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A DISTRICT ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL;

LAWYER; PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTANT; INCOME TAX PREPARER (WHETHER PAID OR UNPAID); OR BANKING INSTITUTION, AS DEFINED IN SECTION NINE-F OF THE BANKING LAW. WHENEVER SUCH PERSON IS REQUIRED TO REPORT UNDER THIS SECTION IN HIS OR HER CAPACITY AS A MEMBER OF THE STAFF OF A MEDICAL OR OTHER PUBLIC OR PRIVATE INSTITUTION, FACILITY, OR AGENCY, HE OR SHE SHALL IMMEDIATELY NOTIFY THE PERSON IN CHARGE OF SUCH INSTITUTION, FACILITY, OR AGENCY, OR HIS OR HER DESIGNATED AGENT, WHO THEN ALSO SHALL BECOME RESPONSIBLE TO REPORT OR CAUSE REPORTS TO BE MADE. HOWEVER, NOTHING IN THIS SECTION IS INTENDED TO REQUIRE MORE THAN ONE REPORT FROM ANY SUCH INSTITUTION, FACILITY, OR AGENCY.

2. (A) THE REPORTS REQUIRED TO BE MADE BY SUBDIVISION ONE OF THIS SECTION SHALL BE MADE TO THE LOCAL SOCIAL SERVICES OFFICIAL OF THE SOCIAL SERVICES DISTRICT IN WHICH THE REPORTING PERSON GAINS KNOWLEDGE OF THE ILLEGAL ACTIVITY OR IN WHICH THE ELDERLY PERSON RESIDES.

(B) UPON THE RECEIPT OF SUCH A REPORT, SUCH SOCIAL SERVICES OFFICIAL SHALL INVESTIGATE SUCH REPORT AND TAKE SUCH ACTION AS MAY BE WARRANTED PURSUANT TO THE RULES OF THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES PROMULGATED THEREFOR.

(C) THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE RULES PROVIDING FOR THE CONDUCT OF INVESTIGATIONS OF REPORTS MADE PURSUANT TO THIS SECTION AND FOR THE IMPLEMENTATION OF MEASURES TO PROTECT PERSONS AGED SIXTY-TWO YEARS OR OLDER AGAINST SUCH FINANCIAL EXPLOITATION WHEN IT IS FOUND. SUCH RULES SHALL INCLUDE, BUT NOT BE LIMITED TO, NOTIFYING THE APPROPRIATE DISTRICT ATTORNEY, THE ATTORNEY GENERAL, OR OTHER APPROPRIATE LAW ENFORCEMENT OFFICIAL OF ILLEGAL CONDUCT AND NOTIFYING THE NON-IMPLICATED NEXT OF KIN, ATTORNEY-IN-FACT, OR GUARDIAN OR THE PERSON AND/OR PROPERTY OF THE ELDERLY PERSON.

3. ANY PERSON AGED SIXTY-TWO OR OVER OR HIS OR HER ESTATE SHALL HAVE A CAUSE OF ACTION FOR DAMAGES AGAINST ANY PERSON WHO FAILS TO MAKE A REPORT REQUIRED BY SUBDIVISION ONE OF THIS SECTION.

S 6. Section 202 of the elder law is amended by adding a new subdivision 15 to read as follows:

15. TO CONDUCT AN OUTREACH, EDUCATION AND TRAINING PROGRAM FOR FINANCIAL INSTITUTIONS AS DEFINED IN SUBDIVISION SIX OF SECTION 470.00 OF THE PENAL LAW.

S 7. The elder law is amended by adding a new section 219-a to read as follows:

S 219-A. FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERM "DESIGNATED AGENCY" SHALL HAVE THE MEANING ASCRIBED TO IT UNDER SECTION TWO HUNDRED FOURTEEN OF THIS TITLE AND "FINANCIAL INSTITUTION" SHALL HAVE THE MEANING ASCRIBED TO IT IN SUBDIVISION SIX OF SECTION 470.00 OF THE PENAL LAW.

2. THE DIRECTOR, WITHIN THE AMOUNTS APPROPRIATED THEREFOR, SHALL, IN CONJUNCTION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE BANKING DEPARTMENT, ESTABLISH A FINANCIAL EXPLOITATION OUTREACH, EDUCATION AND TRAINING PROGRAM, HEREINAFTER REFERRED TO AS "THE PROGRAM" FOR THE PURPOSE OF PROVIDING AN EDUCATION, OUTREACH AND TRAINING PROGRAM TO FINANCIAL INSTITUTIONS, TO CERTIFIED PUBLIC ACCOUNTANTS LICENSED IN THIS STATE, TO ANY PREPARER OF TAXES OPERATING IN THIS STATE AND TO ATTORNEYS LICENSED IN THIS STATE. THE PROGRAM SHALL BE A VOLUNTARY PROGRAM. THE DIRECTOR, IN CONJUNCTION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE BANKING DEPARTMENT, SHALL COORDINATE ACTIVITIES TO IDENTIFY AND PROVIDE TRAINING TO THE INSTITUTIONS AND INDIVIDUALS DESCRIBED IN THIS SECTION.

3. (A) AS PART OF THE PROGRAM, THE DIRECTOR MAY AWARD GRANTS TO QUALIFIED DESIGNATED AGENCIES TO ESTABLISH LOCAL ELDERLY EXPLOITATION OUTREACH, EDUCATION AND TRAINING PROGRAMS. QUALIFIED DESIGNATED AGENCIES SHALL WORK COLLABORATIVELY WITH SUCH INSTITUTIONS AND INDIVIDUALS, AND THEIR REPRESENTATIVE ASSOCIATIONS.

(B) IN MAKING SUCH GRANTS, THE DIRECTOR SHALL CONSIDER:

(1) THE MANNER IN WHICH THE DESIGNATED AGENCY PROPOSES TO PROVIDE SUCH EDUCATION, OUTREACH AND TRAINING;

(2) THE CAPACITY OF THE DESIGNATED AGENCY TO COORDINATE ITS SERVICES WITH BANKING, HUMAN SERVICE AND LAW ENFORCEMENT AND PUBLIC AGENCIES WHICH PROVIDE SERVICES OR ASSISTANCE TO THE ELDERLY, INCLUDING THE LOCAL DEPARTMENT OF SOCIAL SERVICES ADULT PROTECTIVE SERVICES UNIT; AND

(3) ANY OTHER CRITERIA DETERMINED BY THE DIRECTOR TO BE APPROPRIATE.

4. THE PROGRAM SHALL, AT A MINIMUM, CONSIST OF THE FOLLOWING ELEMENTS WHICH SHALL BE PROVIDED BY THE OFFICE:

(A) EDUCATIONAL AND INFORMATIONAL MATERIALS IN PRINT, AUDIO, VISUAL, ELECTRONIC OR OTHER MEDIA;

(B) PUBLIC SERVICE ANNOUNCEMENTS, ADVERTISEMENTS, MEDIA CAMPAIGNS, WORKSHOPS, MASS MAILINGS, CONFERENCES OR PRESENTATIONS; AND

(C) INSTRUCTIONS ON HOW TO REPORT KNOWN OR SUSPECTED INCIDENTS OF FINANCIAL EXPLOITATION OF THE ELDERLY, INCLUDING THE APPROPRIATE TELEPHONE NUMBERS TO CALL AND THE TYPES OF INFORMATION THAT WOULD ASSIST THE OFFICE WITH ITS INVESTIGATION OF SUCH REPORTS.

5. THE DIRECTOR SHALL CONVENE AN ADVISORY COMMITTEE MADE UP OF AT LEAST TEN, BUT NO MORE THAN TWENTY MEMBERS TO ADVISE THE DIRECTOR AND MAKE RECOMMENDATIONS ON THE ASPECTS OF DEVELOPING AND IMPLEMENTING THE PROGRAM. MEMBERS OF THE ADVISORY COMMITTEE SHALL INCLUDE, BUT NOT BE LIMITED TO: AT LEAST THREE REPRESENTATIVES FROM STATEWIDE SENIOR ADVOCACY ORGANIZATIONS, AT LEAST ONE ATTORNEY WHOSE PRACTICE CONCENTRATES IN ELDER LAW OR AN INDIVIDUAL ACTING ON BEHALF OF THE ELDER LAW SECTION OF THE NEW YORK STATE BAR ASSOCIATION, AT LEAST ONE BANKER OR A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING BANKERS, AT LEAST ONE CERTIFIED PUBLIC ACCOUNTANT OR A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING CERTIFIED PUBLIC ACCOUNTANTS, AT LEAST TWO MEMBERS REPRESENTING PROTECTIVE SERVICE AGENCIES FOR ADULTS, AND AT LEAST TWO LAW ENFORCEMENT REPRESENTATIVES.

S 8. The state finance law is amended by adding a new section 99-r to read as follows:

S 99-R. FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SUPERINTENDENT OF BANKS A SPECIAL REVENUE FUND TO BE KNOWN AS THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND.

2. THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND SHALL CONSIST OF ALL MONEYS, APPROPRIATED THERETO, AND ALL OTHER FEES, FINES, GRANTS, BEQUESTS OR OTHER MONIES CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. THE MONEYS OF THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND SHALL BE DISBURSED BY THE COMPTROLLER TO THE STATE OFFICE FOR THE AGING FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF SECTIONS TWO HUNDRED NINETEEN AND TWO HUNDRED NINETEEN-A OF THE ELDER LAW.

S 9. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.