S T A T E O F N E W Y O R K

5056

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

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

AN ACT to amend the penal 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:

Section 1. Section 260.31 of the penal law, as added by chapter 381 of the laws of 1998, subdivision 1 as amended, subdivision 4 as added and such section as renumbered by chapter 14 of the laws of 2010 and subdivision 2 as amended by chapter 193 of the laws of 2010, is amended to read as follows:

S 260.31 Vulnerable elderly persons; definitions.

For the purpose of sections 260.32 [and], 260.34, 260.35, 260.36 AND 260.37 of this article, the following definitions shall apply:

1. "Caregiver" means a person who (i) assumes responsibility for the care of a vulnerable elderly person, or an incompetent or physically disabled person pursuant to a court order; or (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person, or an incompetent or physically disabled person. "CAREGIVER" MAY ALSO INCLUDE, BUT IS NOT LIMITED TO, RELATIVES, VOLUNTARY GUARDIANS, ADULT HOUSEHOLD MEMBERS, NEIGHBORS, OR HEALTH CARE PROVIDERS.

2. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

3. "Vulnerable elderly person" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or

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

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emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

4. "Incompetent or physically disabled person" means an individual who is unable to care for himself or herself because of physical disability, mental disease or defect.

5. "DECEPTION" MEANS MISREPRESENTING OR CONCEALING A MATERIAL FACT IN RELATION TO:

A. SERVICES RENDERED, DISPOSITION OF PROPERTY, OR USE OF PROPERTY, WHEN SUCH SERVICES OR PROPERTY ARE INTENDED TO BENEFIT AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON; OR

B. TERMS OF A CONTRACT OR AGREEMENT ENTERED INTO WITH AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON; OR

C. AN EXISTING OR PREEXISTING CONDITION OF ANY PROPERTY INVOLVED IN A CONTRACT OR AGREEMENT ENTERED INTO WITH AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON.

6. "ELDERLY PERSON" MEANS A PERSON SIXTY YEARS OF AGE OR OLDER.

S 2. The penal law is amended by adding three new sections 260.35, 260.36 and 260.37 to read as follows:

S 260.35 EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE FIRST DEGREE.

A PERSON IS GUILTY OF EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE FIRST DEGREE WHEN HE OR SHE, THROUGH A BUSINESS RELATIONSHIP OR THEIR CAREGIVER STATUS, KNOWINGLY, BY DECEPTION OR INTIMIDATION, OBTAINS, USES OR ENDEAVORS TO OBTAIN OR USE, AN ELDERLY PERSON'S, A VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON OF THE USE, BENEFIT, OR POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY, OR TO BENEFIT SOMEONE OTHER THAN THE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, WHEN SUCH FUNDS, ASSETS OR PROPERTY ARE VALUED AT ONE HUNDRED THOUSAND DOLLARS OR MORE.

EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE FIRST DEGREE IS A CLASS B FELONY.

S 260.36 EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE.

A PERSON IS GUILTY OF EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE WHEN HE OR SHE, THROUGH A BUSINESS RELATIONSHIP OR THEIR CAREGIVER STATUS, KNOWINGLY, BY DECEPTION OR INTIMIDATION, OBTAINS, USES OR ENDEAVORS TO OBTAIN OR USE, AN ELDERLY PERSON'S, VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON OF THE USE, BENEFIT, OR POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY, OR TO BENEFIT SOMEONE OTHER THAN THE ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, WHEN SUCH FUNDS, ASSETS OR PROPERTY ARE VALUED AT THREE THOUSAND DOLLARS OR MORE.

EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE SECOND DEGREE IS A CLASS C FELONY.

S 260.37 EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE THIRD DEGREE.

A PERSON IS GUILTY OF EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE THIRD DEGREE WHEN HE OR SHE, THROUGH A BUSINESS RELATIONSHIP OR THEIR CAREGIVER STATUS, KNOWINGLY, BY DECEPTION OR INTIMIDATION, OBTAINS, USES OR ENDEAVORS TO OBTAIN OR USE, AN ELDERLY PERSON'S, VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON OF THE USE, BENEFIT, OR POSSESSION OF THE FUNDS, ASSETS, OR PROPERTY, OR TO BENEFIT SOMEONE OTHER THAN THE ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON.

EXPLOITATION OF AN ELDERLY PERSON, VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IN THE THIRD DEGREE IS A CLASS D FELONY.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.