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

8535

2011-2012 Regular Sessions

I N A S S E M B L Y

July 13, 2011

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

AN ACT to amend the penal law, in relation to establishing the crime of financial exploitation of a vulnerable elderly person or a person with a disability; and to amend the general obligations law, in relation to civil liability for financial exploitation of a vulnerable elderly person

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

Section 1. The penal law is amended by adding a new article 262 to read as follows:

ARTICLE 262

FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY

SECTION 262.00 DEFINITIONS.

262.05 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FOURTH DEGREE.

262.10 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE THIRD DEGREE.

262.15 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE SECOND DEGREE.

262.20 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FIRST DEGREE.

262.30 FINANCIAL EXPLOITATION; NO DEFENSE.

262.35 FINANCIAL EXPLOITATION; DEFENSE.

S 262.00 DEFINITIONS.

FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL APPLY:

1. "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 PHYSICAL OR MENTAL DYSFUNCTIONING WHICH

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

LBD11486-01-1

RENDERS SUCH PERSON INCAPABLE OF APPRAISING OR PREVENTING THE COMMISSION OF THE OFFENSE.

2. "PERSON WITH A DISABILITY" MEANS A PERSON WHO HAS A PHYSICAL, MENTAL OR MEDICAL IMPAIRMENT RESULTING FROM ANATOMICAL, PHYSIOLOGICAL, OR NEUROLOGICAL CONDITIONS THAT PREVENT THE EXERCISE OF A NORMAL BODILY FUNCTION OR THAT SUBSTANTIALLY IMPAIR COGNITIVE FUNCTION, AND INCLUDE BUT ARE NOT LIMITED TO, IMPAIRMENTS REQUIRING THE USE OF AN ARTIFICIAL DEVICE TO MOVE, WALK, SEE, HEAR, OR BREATHE, SUCH AS A WHEEL CHAIR, BRACES, CRUTCHES, RESPIRATOR, OR OTHER SUPPORTIVE EQUIPMENT, OR USE OF A GUIDE DOG OR OTHER GUIDING DEVICE.

3. "PERSON" INCLUDES ANY INDIVIDUAL, FIRM, PARTNERSHIP, ASSOCIATION, PRIVATE OR PUBLIC CORPORATION, OR A GOVERNMENT OR GOVERNMENTAL INSTRUMENTALITY.

4. "INTIMIDATION" MEANS THE COMMUNICATION TO A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY THAT HE OR SHE SHALL BE DEPRIVED OF FOOD OR NUTRITION, SHELTER, PRESCRIBED MEDICATION OR MEDICAL CARE AND TREATMENT; OR THE USE OF, OR THREATENED USE OF, UNLAWFUL PHYSICAL FORCE; OR ANY THREAT INVOLVING EXTORTION AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION 155.05 OF THIS CHAPTER.

5. "DECEPTION" MEANS A FALSE REPRESENTATION OR CONCEALMENT OF A MATTER OF FACT, WHETHER BY WORDS OR CONDUCT, BY FALSE OR MISLEADING STATEMENTS, WHICH DECEIVES AND IS INTENDED TO DECEIVE, THE VULNERABLE ELDERLY PERSON OR PERSON WITH A DISABILITY, SO THAT HE OR SHE SHALL ACT UPON IT TO HIS OR HER ECONOMIC DETRIMENT.

6. "OBTAIN" INCLUDES, BUT IS NOT LIMITED TO, THE BRINGING ABOUT OF A TRANSFER OR PURPORTED TRANSFER OF PROPERTY OR OF A LEGAL INTEREST THERE-IN, WHETHER TO THE OBTAINER OR ANOTHER.

7. "CONTROL" MEANS THE POWER, RIGHT OR AUTHORITY TO MANAGE, DIRECT, SUPERINTEND, RESTRICT, REGULATE, GOVERN, ADMINISTER, OR OVERSEE THE WHOLE OR ANY PART OF THE PROPERTY OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY.

8. "A PERSON STANDS IN A POSITION OF TRUST OR CONFIDENCE" WITH A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY WHEN HE OR SHE:

(A) IS A PARENT, SPOUSE, ADULT CHILD OR OTHER RELATIVE BY BLOOD OR MARRIAGE OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, OR

(B) IS A JOINT TENANT OR TENANT IN COMMON WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, OR

(C) HAS A POWER OF ATTORNEY OR OTHER LEGAL OR FIDUCIARY RELATIONSHIP WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, OR

(D) RECEIVES MONETARY OR OTHER VALUABLE CONSIDERATION FOR PROVIDING CARE FOR THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, OR

(E) LIVES WITH OR PROVIDES SOME COMPONENT OF HOME CARE SERVICES ON A CONTINUING BASIS TO THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND INCLUDES A NEIGHBOR OR FRIEND WHO DOES NOT PROVIDE SUCH SERVICES BUT HAS ACCESS TO THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY BASED ON SUCH RELATIONSHIP.

9. "PROPERTY" MEANS ANY MONEY, PERSONAL PROPERTY, REAL PROPERTY, THING IN ACTION, COMPUTER DATA, COMPUTER PROGRAM, EVIDENCE OF DEBT OR CONTRACT, OR ANY ARTICLE, SUBSTANCE OR THING OF VALUE.

10. "VALUE OF PROPERTY" SHALL HAVE THE SAME MEANING AND SHALL BE ASCERTAINED IN ACCORDANCE WITH SECTION 155.20 OF THIS CHAPTER.

S 262.05 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FOURTH DEGREE.

A PERSON IS GUILTY OF FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR PERSON WITH A DISABILITY IN THE FOURTH DEGREE WHEN HE OR SHE STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND HE OR SHE KNOWINGLY AND BY DECEPTION OR INTIMIDATION OBTAINS CONTROL OVER THE PROPERTY OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, WITH INTENT TO WRONGFULLY DEPRIVE THAT PERSON OF THE TITLE TO, USE, BENEFIT, OR POSSESSION OF SUCH PROPERTY.

FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FOURTH DEGREE IS A CLASS A MISDEMEANOR.

S 262.10 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE THIRD DEGREE.

A PERSON IS GUILTY OF FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE THIRD DEGREE WHEN HE OR SHE STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND HE OR SHE KNOWINGLY AND BY DECEPTION OR INTIMIDATION OBTAINS CONTROL OVER THE PROPERTY OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, WITH INTENT TO WRONGFULLY DEPRIVE THAT PERSON OF THE TITLE TO, USE, BENEFIT, OR POSSESSION OF SUCH PROPERTY, AND THE VALUE OF THE PROPERTY EXCEEDS ONE THOUSAND DOLLARS.

FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE THIRD DEGREE IS A CLASS E FELONY.

S 262.15 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE SECOND DEGREE WHEN HE OR SHE STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND HE OR SHE KNOWINGLY AND BY DECEPTION OR INTIMIDATION OBTAINS CONTROL OVER THE PROPERTY OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, WITH INTENT TO WRONGFULLY DEPRIVE THAT PERSON OF THE TITLE TO, USE, BENEFIT, OR POSSESSION OF SUCH PROPERTY, AND THE VALUE OF THE PROPERTY EXCEEDS THREE THOUSAND DOLLARS.

FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE SECOND DEGREE IS A CLASS D FELONY.

S 262.20 FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FIRST DEGREE WHEN HE OR SHE STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY AND HE OR SHE KNOWINGLY AND BY DECEPTION OR INTIMIDATION OBTAINS CONTROL OVER THE PROPERTY OF THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY, WITH INTENT TO WRONGFULLY DEPRIVE THAT PERSON OF THE TITLE TO, USE, BENEFIT, OR POSSESSION OF SUCH PROPERTY, AND THE VALUE OF THE PROPERTY EXCEEDS FIFTY THOUSAND DOLLARS.

FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY IN THE FIRST DEGREE IS A CLASS C FELONY.

S 262.30 FINANCIAL EXPLOITATION; NO DEFENSE.

IT SHALL BE NO DEFENSE TO ANY PROSECUTION FOR FINANCIAL EXPLOITATION THAT THE DEFENDANT DID NOT KNOW THE FACTS AND CONDITIONS RESPONSIBLE FOR MAKING THE VICTIM A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY.

S 262.35 FINANCIAL EXPLOITATION; DEFENSE.

NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO IMPOSE CRIMINAL LIABILITY UPON ANY PERSON WHO IN GOOD FAITH SEEKS TO ASSIST THE VULNERABLE ELDERLY PERSON OR PERSON WITH A DISABILITY IN THE MANAGEMENT OF HIS OR HER PROPERTY, BUT THROUGH NO FAULT OF SUCH PERSON IS UNABLE TO ASSIST THE VULNERABLE ELDERLY PERSON OR THE PERSON WITH A DISABILITY.

S 2. The general obligations law is amended by adding a new section 11-108 to read as follows:

S 11-108. CIVIL LIABILITY FOR FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY. 1. A PERSON CHARGED BY AN "ACCUSATORY INSTRUMENT", AS DEFINED IN SUBDIVISION ONE OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, WITH THE OFFENSE OF FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY PERSON OR A PERSON WITH A DISABILITY AS SET OUT IN ARTICLE TWO HUNDRED SIXTY-TWO OF THE PENAL LAW, AND WHO FAILS OR REFUSES TO RETURN THE VICTIM'S PROPERTY WITHIN SIXTY DAYS FOLLOWING RECEIPT OF A WRITTEN DEMAND FROM THE VICTIM OR THE VICTIM'S LEGAL REPRESENTATIVE SHALL, UPON A FINDING THAT SUCH PERSON UNLAWFULLY OBTAINED THE VICTIM'S PROPERTY, BE LIABLE TO THE VICTIM OR TO THE ESTATE OF THE VICTIM IN DAMAGES OF TREBLE THE AMOUNT OF THE VALUE OF THE PROPERTY WRONGFULLY OBTAINED, PLUS REASONABLE ATTORNEY FEES AND COURT COSTS.

2. THE BURDEN OF PROOF THAT THE DEFENDANT UNLAWFULLY OBTAINED THE VICTIM'S PROPERTY SHALL BE BY A PREPONDERANCE OF THE EVIDENCE.

3. THIS SECTION SHALL BE OPERATIVE WHETHER OR NOT THE DEFENDANT HAS BEEN CONVICTED OF THE OFFENSE.

4. THIS SECTION SHALL BE OPERATIVE IN ADDITION TO ANY OTHER RIGHT OF ACTION OR RECOVERY OTHERWISE AVAILABLE UNDER LAW TO THE VICTIM OR THE VICTIM'S ESTATE.

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