

5389

2011-2012 Regular Sessions

I N S E N A T E

May 16, 2011

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

AN ACT to amend the elder law, in relation to financial exploitation of the elderly; to amend the state finance law, in relation to creating the financial exploitation outreach, education and training fund; to amend the social services law, in relation to protection of the elderly against financial exploitation; and to repeal title 13 of article 5 of such 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:

1 Section 1. Section 202 of the elder law is amended by adding a new
2 subdivision 15 to read as follows:

3 15. TO CONDUCT AN OUTREACH, EDUCATION AND TRAINING PROGRAM FOR FINAN-
4 CIAL INSTITUTIONS AS DEFINED IN SUBDIVISION SIX OF SECTION 470.00 OF THE
5 PENAL LAW.

6 S 2. The elder law is amended by adding a new section 219-a to read as
7 follows:

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

14 2. THE DIRECTOR, WITHIN THE AMOUNTS APPROPRIATED THEREFOR, SHALL, IN
15 CONJUNCTION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE
16 DEPARTMENT OF FINANCIAL SERVICES, ESTABLISH A FINANCIAL EXPLOITATION
17 OUTREACH, EDUCATION AND TRAINING PROGRAM, HEREINAFTER REFERRED TO AS
18 "THE PROGRAM" FOR THE PURPOSE OF PROVIDING AN EDUCATION, OUTREACH AND
19 TRAINING PROGRAM TO FINANCIAL INSTITUTIONS, TO CERTIFIED PUBLIC ACCOUNT-
20 ANTS LICENSED IN THIS STATE, TO ANY PREPARER OF TAXES OPERATING IN THIS
21 STATE AND TO ATTORNEYS LICENSED IN THIS STATE. THE PROGRAM SHALL BE A

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

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1 VOLUNTARY PROGRAM. THE DIRECTOR, IN CONJUNCTION WITH THE OFFICE OF CHIL-
2 DREN AND FAMILY SERVICES AND THE DEPARTMENT OF FINANCIAL SERVICES, SHALL
3 COORDINATE ACTIVITIES TO IDENTIFY AND PROVIDE TRAINING TO THE INSTI-
4 TUTIONS AND INDIVIDUALS DESCRIBED IN THIS SECTION.

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

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

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

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

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

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

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

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

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

28 5. THE DIRECTOR SHALL CONVENE AN ADVISORY COMMITTEE MADE UP OF AT
29 LEAST TEN, BUT NO MORE THAN TWENTY MEMBERS TO ADVISE THE DIRECTOR AND
30 MAKE RECOMMENDATIONS ON THE ASPECTS OF DEVELOPING AND IMPLEMENTING THE
31 PROGRAM. MEMBERS OF THE ADVISORY COMMITTEE SHALL INCLUDE, BUT NOT BE
32 LIMITED TO: AT LEAST THREE REPRESENTATIVES FROM STATEWIDE SENIOR ADVOCA-
33 CY ORGANIZATIONS, AT LEAST ONE ATTORNEY WHOSE PRACTICE CONCENTRATES IN
34 ELDER LAW OR AN INDIVIDUAL ACTING ON BEHALF OF THE ELDER LAW SECTION OF
35 THE NEW YORK STATE BAR ASSOCIATION, AT LEAST ONE BANKER OR A REPRESEN-
36 TATIVE OF AN ASSOCIATION REPRESENTING BANKERS, AT LEAST ONE CERTIFIED
37 PUBLIC ACCOUNTANT OR A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING
38 CERTIFIED PUBLIC ACCOUNTANTS, AT LEAST TWO MEMBERS REPRESENTING PROTEC-
39 TIVE SERVICE AGENCIES FOR ADULTS, AND AT LEAST TWO LAW ENFORCEMENT
40 REPRESENTATIVES.

41 S 3. The state finance law is amended by adding a new section 99-u to
42 read as follows:

43 S 99-U. FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING FUND.

44 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER
45 AND THE SUPERINTENDENT OF FINANCIAL SERVICES A SPECIAL REVENUE FUND TO
46 BE KNOWN AS THE FINANCIAL EXPLOITATION, OUTREACH, EDUCATION AND TRAINING
47 FUND.

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

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

1 S 4. Title 13 of article 5 of the social services law is REPEALED and
2 a new title 13 is added to read as follows:

3 TITLE 13

4 MANDATORY REPORTING OF FINANCIAL EXPLOITATION OF
5 THE ELDERLY

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

8 S 370-AA. MANDATORY REPORTING OF FINANCIAL EXPLOITATION OF THE ELDER-
9 LY. 1. THE FOLLOWING PERSONS AND OFFICIALS ARE REQUIRED TO REPORT OR
10 CAUSE A REPORT TO BE MADE IN ACCORDANCE WITH THIS SECTION WHEN THEY HAVE
11 REASONABLE CAUSE TO SUSPECT THAT A PERSON AGED SIXTY-TWO YEARS OR OLDER
12 COMING BEFORE THEM IN THEIR PROFESSIONAL OR OFFICIAL CAPACITY IS A
13 VICTIM OF FINANCIAL EXPLOITATION IN VIOLATION OF THE PENAL LAW: ANY
14 PHYSICIAN; REGISTERED PHYSICIAN ASSISTANT; SURGEON; MEDICAL EXAMINER;
15 CORONER; DENTIST; DENTAL HYGIENIST; OSTEOPATH; OPTOMETRIST; CHIROPRACTIC-
16 TOR; PODIATRIST; RESIDENT; INTERN; PSYCHOLOGIST; REGISTERED NURSE;
17 HOSPITAL OR NURSING HOME PERSONNEL ENGAGED IN THE ADMISSION, EXAMINA-
18 TION, CARE, OR TREATMENT OF PERSONS; SOCIAL SERVICES WORKER; SOCIAL
19 WORKER; MENTAL HEALTH PROFESSIONAL; SUBSTANCE ABUSE COUNSELOR; ALCOHOL-
20 ISM COUNSELOR; PEACE OFFICER; POLICE OFFICER; DISTRICT ATTORNEY OR
21 ASSISTANT DISTRICT ATTORNEY; INVESTIGATOR EMPLOYED IN THE OFFICE OF A
22 DISTRICT ATTORNEY; OR OTHER LAW ENFORCEMENT OFFICIAL; LAWYER; PUBLIC
23 ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTANT; INCOME TAX PREPARER (WHETHER
24 PAID OR UNPAID); OR OFFICER OF A BANKING INSTITUTION, AS DEFINED IN
25 SECTION NINE-F OF THE BANKING LAW. WHENEVER SUCH PERSON IS REQUIRED TO
26 REPORT UNDER THIS SECTION IN HIS OR HER CAPACITY AS A MEMBER OF THE
27 STAFF OF A MEDICAL OR OTHER PUBLIC OR PRIVATE INSTITUTION, FACILITY, OR
28 AGENCY, HE OR SHE SHALL IMMEDIATELY NOTIFY THE PERSON IN CHARGE OF SUCH
29 INSTITUTION, FACILITY, OR AGENCY, OR HIS OR HER DESIGNATED AGENT, WHO
30 THEN ALSO SHALL BECOME RESPONSIBLE TO REPORT OR CAUSE REPORTS TO BE
31 MADE. HOWEVER, NOTHING IN THIS SECTION IS INTENDED TO REQUIRE MORE THAN
32 ONE REPORT FROM ANY SUCH INSTITUTION, FACILITY, OR AGENCY.

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

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

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

50 3. ANY PERSON AGED SIXTY-TWO OR OVER OR HIS OR HER ESTATE SHALL HAVE A
51 CAUSE OF ACTION FOR DAMAGES AGAINST ANY PERSON OTHER THAN BANKING INSTI-
52 TUTIONS AS DEFINED IN SECTION NINE-F OF THE BANKING LAW, AND THEIR
53 AFFILIATES WHO FAILS TO MAKE A REPORT REQUIRED BY SUBDIVISION ONE OF
54 THIS SECTION.

55 4. ANY INSTITUTION, FACILITY, OR AGENCY, OTHER THAN AN ALLEGED PERPE-
56 TRATOR, PARTICIPATING IN GOOD FAITH IN THE MAKING OF A REPORT OF AN

1 ALLEGED INCIDENT OF ADULT ABUSE, NEGLECT OR EXPLOITATION, PROVIDING
2 INFORMATION RELATIVE TO SUCH INCIDENT OR FOLLOWING A REPORTING PROTOCOL
3 DEVELOPED JOINTLY WITH THE DEPARTMENT, OR WHO IN GOOD FAITH INVESTIGATES
4 THE REPORT, ADMINISTERS THE REGISTRY, OR WHO PARTICIPATES IN A JUDICIAL
5 OR ADMINISTRATIVE PROCEEDING RESULTING FROM THAT REPORT, SHALL HAVE
6 IMMUNITY FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE BE
7 INCURRED OR IMPOSED.

8 5. ANY PERSON OR AGENCY PROVIDING INFORMATION IN GOOD FAITH, INCLUDING
9 MATERIALS REQUESTED BY THE COMMISSIONER PURSUANT TO THIS TITLE, SHALL
10 HAVE THE SAME IMMUNITY WITH RESPECT TO PARTICIPATION IN ANY INVESTI-
11 GATION BY THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE OR IN
12 ANY JUDICIAL PROCEEDING RESULTING FROM SUCH REPORT.

13 S 5. This act shall take effect on the one hundred twentieth day after
14 it shall have become a law.