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

373

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. KENNEDY -- 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 financial exploitation of the elderly and disabled

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

Section 1. 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 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.

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

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