

2898

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 22, 2013

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Introduced by M. of A. CLARK, COLTON, ORTIZ -- Multi-Sponsored by -- M.  
of A. CYMBROWITZ, GALEF, HOOPER, JACOBS, MAGEE, SWEENEY -- read once  
and referred 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 155.00 of the penal law is amended by adding four  
2 new subdivisions 10, 11, 12 and 13 to read as follows:  
3     10. "ELDERLY" MEANS ANY PERSON WHO IS SIXTY YEARS OF AGE OR OLDER AND  
4 IS SUFFERING FROM A DISEASE OR INFIRMITY ASSOCIATED WITH ADVANCED AGE,  
5 WHICH IS MANIFESTED BY PHYSICAL, MENTAL OR EMOTIONAL DYSFUNCTIONING TO  
6 THE EXTENT THAT SUCH PERSON IS INCAPABLE OF AVOIDING OR PREVENTING THE  
7 COMMISSION OF A LARCENY AGAINST HIMSELF OR HERSELF.  
8     11. "DISABLED" MEANS ANY PERSON WHO SUFFERS FROM A PERMANENT PHYSICAL  
9 OR MENTAL IMPAIRMENT, AS A RESULT OF A DISEASE, INJURY, FUNCTIONAL  
10 DISORDER OR CONGENITAL CONDITION, TO THE EXTENT THAT SUCH PERSON IS  
11 INCAPABLE OF AVOIDING OR PREVENTING THE COMMISSION OF A LARCENY AGAINST  
12 HIMSELF OR HERSELF.  
13     12. "PERSON IN A POSITION OF TRUST" MEANS A PERSON WHO:  
14     (A) IS THE PARENT, SPOUSE, ADULT CHILD OR OTHER RELATIVE BY BLOOD OR  
15 AFFINITY OF AN ELDERLY OR DISABLED PERSON; OR  
16     (B) IS A JOINT TENANT OR TENANT IN COMMON WITH AN ELDERLY OR DISABLED  
17 PERSON; OR  
18     (C) HAS A FIDUCIARY OBLIGATION TO AN ELDERLY OR DISABLED PERSON; OR  
19     (D) RECEIVES MONETARY OR OTHER VALUABLE CONSIDERATION FOR PROVIDING  
20 CARE FOR THE ELDERLY OR DISABLED PERSON; OR  
21     (E) LIVES WITH OR PROVIDES SOME COMPONENT OF HOME CARE SERVICES ON A  
22 CONTINUING BASIS TO THE ELDERLY OR DISABLED PERSON INCLUDING, BUT NOT  
23 LIMITED TO, A NEIGHBOR OR FRIEND WHO DOES NOT PROVIDE SUCH SERVICES BUT  
24 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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1 13. "INTIMIDATION" MEANS THE COMMUNICATION TO AN ELDERLY OR DISABLED  
2 PERSON THAT HE OR SHE WILL BE DEPRIVED OF FOOD, NUTRITION, SHELTER,  
3 MEDICATION, MEDICAL CARE OR MEDICAL TREATMENT.

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

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

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

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

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

21 S 3. This act shall take effect on the first of November next succeed-  
22 ing the date on which it shall have become a law.