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

530

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

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 and the social services 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. The opening paragraph and subdivision 1 of section 260.31 of the penal law, the opening paragraph as added by chapter 381 of the laws of 1998, subdivision 1 as amended and such section as renumbered by chapter 14 of the laws of 2010, are amended to read as follows:

For the purpose of sections 155.05, 260.32 and 260.34 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) VOLUNTARILY ASSUMES RESPONSIBILITY FOR THE CARE OF A VULNERABLE ELDERLY PERSON OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON; OR (III) receives monetary or other valuable consideration for providing care for a vulnerable elderly person, or an incompetent or physically disabled person.

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 VULNERABLE ELDERLY OR INCOMPETENT OR PHYSICALLY DISABLED PERSON.

(I) A PERSON OBTAINS PROPERTY BY FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON WHEN, WHILE IN A BUSINESS RELATIONSHIP OR CAREGIVER STATUS WITH A VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, HE OR SHE KNOWINGLY OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE A VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S PROPERTY WITH THE INTENT TO TEMPORARILY OR PERMANENTLY DEPRIVE THE VULNERABLE ELDERLY

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

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PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON OF THE USE, BENEFIT OR POSSESSION OF THE PROPERTY, OR TO BENEFIT HIMSELF OR HERSELF OR A THIRD PERSON.

(II) A PERSON OBTAINS PROPERTY BY FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON WHEN, WHILE IN A BUSINESS RELATIONSHIP OR CAREGIVER STATUS WITH A VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, HE OR SHE KNOWINGLY OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE CASH, SECURITIES OR OTHER PROPERTY FROM A DEPOSIT ACCOUNT AS DESCRIBED IN SECTION SIX HUNDRED SEVENTY-EIGHT OF THE BANKING LAW FOR ANY OTHER PURPOSE BESIDES FOR THE BENEFIT OF THE ORIGINAL DEPOSITOR WHERE THE VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON IS THE ORIGINAL DEPOSITOR OF THE ACCOUNT. FOR PURPOSES OF THIS PART, ANY BANKING ORGANIZATION OR FOREIGN BANKING CORPORATION OR AGENT OF THE ORGANIZATION OR FOREIGN BANKING CORPORATION THAT RELEASES CASH, SECURITIES OR OTHER PROPERTY TO AN ADDITIONAL ACCOUNT HOLDER SHALL NOT BE CULPABLE OF ANY OFFENSE BY THE SOLE ACT OF RELEASING CASH, SECURITIES OR OTHER PROPERTY TO AN ADDITIONAL ACCOUNT HOLDER.

S 3. Section 155.15 of the penal law is amended by adding a new subdivision 3 to read as follows:

3. IN ANY PROSECUTION FOR LARCENY BY FINANCIAL EXPLOITATION OF A VULNERABLE ELDERLY, OR INCOMPETENT OR PHYSICALLY DISABLED PERSON, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT ACQUIRED EXPRESS CONSENT FROM THE VULNERABLE OR INCOMPETENT OR PHYSICALLY DISABLED PERSON TO OBTAIN OR USE THE VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S PROPERTY FOR HIS OR HER OWN BENEFIT OR THE BENEFIT OF A THIRD PERSON. CONSENT MUST HAVE BEEN GIVEN BY THE VULNERABLE ELDERLY PERSON OR INCOMPETENT OR PHYSICALLY DISABLED PERSON PRIOR TO LOSING THE ABILITY TO ADEQUATELY CARE FOR HIM OR HERSELF OR BY A PERSON WHO HOLDS A POWER OF ATTORNEY OR SIMILAR AUTHORITY OVER THE VULNERABLE ELDERLY OR INCOMPETENT OR PHYSICALLY DISABLED PERSON AT ANY TIME PRIOR TO THE DEFENDANT OBTAINING OR USING OR ATTEMPTING TO OBTAIN OR USE THE VULNERABLE ELDERLY PERSON'S OR INCOMPETENT OR PHYSICALLY DISABLED PERSON'S PROPERTY.

S 4. Subdivision 5 of section 473 of the social services law, as added by chapter 395 of the laws of 1995, is amended to read as follows:

5. Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of protective services to adults in accordance with the provisions of this title has a reason to believe that a criminal offense has been committed, as defined in the penal law, against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department and the district attorney's office [when such office has requested such information be reported by a social services official or his or her designee].

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.