STATE OF NEW YORK

409

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. ROBACH -- 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 elder abuse through social media

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 section 260.40 to read as follows:

§ 260.40 Unlawful posting of a vulnerable elderly person on social media.

A person is guilty of unlawful posting of a vulnerable elderly person on social media when, being a caregiver while performing their duty of care for a vulnerable elderly person, he or she posts an image or video of such person on social media including, but not limited to Facebook, YouTube, Twitter, Instagram, Snapchat, Tumblr, Flickr and Vine, without such person's consent.

1. The following definitions are applicable to this section:

(a) "Forcible compulsion" means to compel by either:

(i) use of physical force; or

(ii) a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

(b) "Physical helplessness" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(c) "Mental incapacity" means an individual does not comprehend the nature and consequences of what he or she consents to.

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

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(d) "Mental disability" means that a person suffers from a mental disease or defect which renders him or her incapable of informed consent.

(e) "Caregiver" means a person who (i) assumes responsibility for the care of a vulnerable elderly person pursuant to a court order; (ii) receives monetary or other valuable consideration for providing care for a vulnerable elderly person; (iii) is identified as a caregiver by a patient under the public health law who provides after-care assistance to a patient living in his or her residence including, but not limited to, a relative, partner, friend or neighbor who has a significant relationship with the patient; or (iv) is an informal caregiver such as a family member, friend, neighbor, or other natural person who normally provides the daily care or supervision of a vulnerable elderly person who may, but need not reside in the same household as the vulnerable elderly person.

(f) "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 demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

2. Lack of consent under this section results from:

(a) forcible compulsion;

(b) physical helplessness;

(c) mental incapacity;

(d) mental disability; or

(e) any circumstance in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

Unlawful posting of a vulnerable elderly person on social media is a class A misdemeanor.

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