Effective 5/4/2022

76-5-111.4 Financial exploitation of a vulnerable adult -- Penalties.

(1)

(a) As used in this section:

(i) "Abuse" means the same as that term is defined in Section 76-5-111.

(ii) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.

(iii) "Deception" means:

(A) a misrepresentation or concealment:

(I) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;

(II) of the terms of a contract or agreement entered into with a vulnerable adult; or

(III) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or

(B) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

(iv) "Endeavor" means to attempt or try.

(v) "Intimidation" means communication conveyed through verbal or nonverbal conduct that threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or that threatens isolation or harm.

(vi) "Isolation" means the same as that term is defined in Section 76-5-111.

(vii) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the vulnerable adult's person or property.

(viii) "Neglect" means the same as that term is defined in Section 76-5-111.

(ix) "Undue influence" occurs when a person:

(A) uses influence to take advantage of a vulnerable adult's mental or physical impairment; or

(B) uses the person's role, relationship, or power:

(I) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or

(II) to gain control deceptively over the decision making of the vulnerable adult.

(x) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of financial exploitation of a vulnerable adult if the actor:

(a) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the vulnerable adult's property, for the benefit of someone other than the vulnerable adult;

(b) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

(c) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;
(d) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or
(e) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.

(3)
(a) A violation of Subsection (2) is a second degree felony if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds $5,000.
(b) A violation of Subsection (2) is a third degree felony if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than $5,000 or cannot be determined.
(c) A violation of Subsection (2) is a class A misdemeanor if done recklessly.
(d) A violation of Subsection (2) is a class B misdemeanor if done with criminal negligence.

(4) It does not constitute a defense to a prosecution for a violation of this section that the actor did not know the age of the vulnerable adult.

Enacted by Chapter 181, 2022 General Session