

1 SENATE BILL 189

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Katy Duhigg

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10 AN ACT

11 RELATING TO FINANCIAL EXPLOITATION; ENACTING THE FINANCIAL  
12 EXPLOITATION ACT; CREATING REPORTING REQUIREMENTS; PROVIDING  
13 FOR THE DELAY OF SUSPECT TRANSACTIONS; DESCRIBING TRAINING  
14 REQUIREMENTS FOR FINANCIAL INSTITUTIONS; CREATING A CIVIL CAUSE  
15 OF ACTION.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 14-2-1 NMSA 1978 (being Laws 1947,  
19 Chapter 130, Section 1, as amended) is amended to read:

20 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--  
21 Every person has a right to inspect public records of this  
22 state except:

23 A. records pertaining to physical or mental  
24 examinations and medical treatment of persons confined to an  
25 institution;

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1 B. letters of reference concerning employment,  
2 licensing or permits;

3 C. letters or memoranda that are matters of opinion  
4 in personnel files or students' cumulative files;

5 D. portions of law enforcement records that reveal:

6 (1) confidential sources, methods or  
7 information; or

8 (2) before charges are filed, names, ~~[address]~~  
9 addresses, contact information or protected personal identifier  
10 information ~~[as defined in this Act]~~ of individuals who are:

11 (a) accused but not charged with a  
12 crime; or

13 (b) victims of or non-law-enforcement  
14 witnesses to an alleged crime of: 1) assault with intent to  
15 commit a violent felony pursuant to Section 30-3-3 NMSA 1978  
16 when the violent felony is criminal sexual penetration; 2)  
17 assault against a household member with intent to commit a  
18 violent felony pursuant to Section 30-3-14 NMSA 1978 when the  
19 violent felony is criminal sexual penetration; 3) stalking  
20 pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking  
21 pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual  
22 penetration pursuant to Section 30-9-11 NMSA 1978; or 6)  
23 criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.  
24 Law enforcement records include evidence in any form received  
25 or compiled in connection with a criminal investigation or

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1 prosecution by a law enforcement or prosecuting agency,  
2 including inactive matters or closed investigations to the  
3 extent that they contain the information listed in this  
4 subsection; provided that the presence of such information on a  
5 law enforcement record does not exempt the record from  
6 inspection;

7 E. as provided by the Confidential Materials Act;

8 F. trade secrets, attorney-client privileged  
9 information and long-range or strategic business plans of  
10 public hospitals discussed in a properly closed meeting;

11 G. tactical response plans or procedures prepared  
12 for or by the state or a political subdivision of the state,  
13 the publication of which could reveal specific vulnerabilities,  
14 risk assessments or tactical emergency security procedures that  
15 could be used to facilitate the planning or execution of a  
16 terrorist attack; [~~and~~]

17 H. as provided by the Financial Exploitation Act;

18 and

19 [~~H.~~] I. as otherwise provided by law."

20 SECTION 2. [NEW MATERIAL] SHORT TITLE.--Sections 2  
21 through 10 of this act may be cited as the "Financial  
22 Exploitation Act".

23 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
24 Financial Exploitation Act:

25 A. "caregiver" means a person who has been

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1 entrusted with or who has assumed responsibility for the care  
2 of an eligible adult or the eligible adult's property and may  
3 include a family member that is related to the eligible adult  
4 by blood or marriage; a court-appointed guardian or  
5 conservator; an adult living in the same household as the  
6 eligible adult; a health care provider; or an employee or  
7 volunteer of an adult daycare, assisted living or residential  
8 care facility, group home, nursing home, hospital, mental  
9 health treatment center or continuing care community or a  
10 service provider of such entity;

11 B. "confidential relationship" means a relationship  
12 of confidence and trust between an eligible adult and another  
13 person, including but not limited to a family member; business  
14 associate or partner; financial advisor; caregiver; health care  
15 or mental health care provider; legal professional; or clergy  
16 member, imam, minister, priest, rabbi or similar religious or  
17 spiritual advisor;

18 C. "eligible adult" means a person eighteen years  
19 of age or older with cognitive impairment or a mental, physical  
20 or developmental condition or a person who is experiencing  
21 other circumstances that cause the person to be susceptible to  
22 undue influence or substantially impaired in the ability to  
23 provide adequately for the person's personal or financial  
24 affairs or protection, regardless of whether the person has  
25 been adjudicated pursuant to Section 45-5-303 NMSA 1978;

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1           D. "fiduciary relationship" means an agreement or  
2 arrangement that creates fiduciary duties owed from one person  
3 to another and includes the relationship between a principal  
4 and an attorney-in-fact pursuant to a power of attorney; a  
5 conservator and a protected person; a trustee and a  
6 beneficiary; a financial advisor or broker and an account  
7 owner; or a representative payee and a beneficiary;

8           E. "financial exploitation" means:

9                   (1) the wrongful or unauthorized taking,  
10 conversion, withholding, appropriation or use of an eligible  
11 adult's assets, including money or other property; or

12                   (2) an act or omission taken by a trusted  
13 person to obtain the benefit, control or use of an eligible  
14 adult's assets, including money or other property, through the  
15 use of deception, intimidation or undue influence;

16           F. "financial institution" means an organization  
17 authorized to do business pursuant to state or federal laws  
18 relating to financial entities and includes a bank, trust  
19 company, savings bank, building and loan association, savings  
20 and loan company or credit union;

21           G. "qualified individual" means a person designated  
22 by a financial institution to conduct a review of suspected  
23 financial exploitation, report suspected financial exploitation  
24 or delay transactions and receive training pursuant to the  
25 provisions of the Financial Exploitation Act;

1           H. "transaction" means an agreement; contract;  
2 conveyance; deed; encumbrance; gift; guarantee; loan; mortgage;  
3 pledge; purchase; sale; title transfer; transfer of money,  
4 security or other financial asset or real or personal property;  
5 or withdrawal from a financial, investment or securities  
6 account or changes to ownership on such account, but excludes  
7 wills, trusts or transfer on death designations or instruments  
8 of a similar type;

9           I. "trusted person" means:

10                   (1) a caregiver, health care or mental health  
11 care provider;

12                   (2) a person upon whom an eligible adult is  
13 dependent and with whom the eligible adult has a confidential  
14 or fiduciary relationship; or

15                   (3) a person in a position of authority,  
16 including an eligible adult's family member, financial advisor,  
17 legal professional, clergy member, imam, minister, priest,  
18 rabbi or similar religious or spiritual advisor; and

19           J. "undue influence" means excessive persuasion or  
20 domination of the decision-making process of an eligible adult  
21 by a trusted person that causes an eligible adult to consent to  
22 a transaction or refrain from consenting to a transaction that  
23 would reasonably be expected to result in financial harm to the  
24 eligible adult, including controlling the eligible adult's  
25 interaction with others, access to information or necessities

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1 of life; using affection, intimidation or coercion; or  
2 initiating changes in the eligible adult's personal or property  
3 rights in haste, secrecy or at inappropriate times and places.  
4 The fact that an eligible adult had independent legal counsel  
5 with respect to the transaction is evidence that the  
6 transaction was not the product of financial exploitation, but  
7 shall not be dispositive on whether the issue of financial  
8 exploitation occurred.

9 SECTION 4. [NEW MATERIAL] REPORTING FINANCIAL  
10 EXPLOITATION.--

11 A. When a qualified individual reasonably believes  
12 that financial exploitation of an eligible adult may have  
13 occurred, may have been attempted or is being attempted, a  
14 qualified individual:

15 (1) shall promptly notify the financial  
16 institutions division of the regulation and licensing  
17 department and the adult protective services division of the  
18 aging and long-term services department;

19 (2) shall attempt to notify a third party  
20 previously designated by the eligible adult; and

21 (3) may attempt to notify a third party that  
22 is not designated but is known by the qualified individual to  
23 be reasonably associated with an eligible adult.

24 B. A qualified individual shall not disclose  
25 information to a third party who is suspected of financial

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1 exploitation or other abuse of the eligible adult.

2 SECTION 5. [NEW MATERIAL] IMMUNITY FOR REPORTING  
3 FINANCIAL EXPLOITATION.--A qualified individual who exercises  
4 reasonable care on behalf of a financial institution and  
5 complies with the provisions of Sections 4 and 8 of this 2021  
6 act shall be immune from liability that might otherwise arise  
7 from such disclosure, as shall the financial institution.

8 SECTION 6. [NEW MATERIAL] DELAY OF SUSPECT  
9 TRANSACTIONS.--

10 A. A financial institution may delay a disbursement  
11 or transaction from an account of an eligible adult or an  
12 account for which the eligible adult is a beneficiary if:

13 (1) after initiating an internal review of the  
14 requested disbursement or transaction, a qualified individual  
15 reasonably believes that the requested disbursement or  
16 transaction may result in financial exploitation of the  
17 eligible adult; and

18 (2) the financial institution:

19 (a) provides written notification of the  
20 delay and the reason for the delay to all parties authorized to  
21 transact business on the account no later than two business  
22 days after the requested disbursement or transaction, unless  
23 any such party is reasonably believed to have attempted the  
24 financial exploitation of the eligible adult;

25 (b) notifies the financial institutions



1 division of the regulation and licensing department and the  
2 adult protective services division of the aging and long-term  
3 services department no later than two business days after the  
4 requested disbursement or transaction; and

5 (c) at the request of the financial  
6 institutions division of the regulation and licensing  
7 department, provides a status report of the internal review  
8 required pursuant to Paragraph (1) of Subsection A of this  
9 section.

10 B. Any delay of a disbursement or transaction as  
11 authorized pursuant to this section shall expire upon the  
12 sooner of:

13 (1) a written determination by the financial  
14 institutions division of the regulation and licensing  
15 department that the disbursement or transaction will not result  
16 in financial exploitation of the eligible adult; or

17 (2) fifteen business days from the date that  
18 the financial institution first delayed the disbursement or  
19 transaction unless either the financial institutions division  
20 of the regulation and licensing department or the adult  
21 protective services division of the aging and long-term  
22 services department makes a written request that the financial  
23 institution extend the delay, in which case the delay shall  
24 expire twenty-five days from the date that the financial  
25 institution first delayed the disbursement or transaction,

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1 unless otherwise terminated or extended by either of the  
2 divisions or by a court order.

3 C. A court may enter an order extending the delay  
4 of the disbursement or transaction or may order other  
5 protective relief based on a petition of the director of the  
6 financial institutions division of the regulation and licensing  
7 department, the director of the adult protective services  
8 division of the aging and long-term services department, the  
9 financial institution that instituted the delay pursuant to  
10 this section or any other interested party.

11 SECTION 7. [NEW MATERIAL] IMMUNITY FOR DELAY IN SUSPECT  
12 TRANSACTIONS.--A financial institution or qualified individual  
13 that exercises reasonable care and is in compliance with  
14 Sections 6 and 8 of this 2021 act, shall be immune from  
15 administrative and civil liability that might otherwise arise  
16 from such delay in a disbursement or transaction pursuant to  
17 Section 6 of this 2021 act.

18 SECTION 8. [NEW MATERIAL] TRAINING TO IDENTIFY FINANCIAL  
19 EXPLOITATION.--

20 A. The director of the financial institutions  
21 division of the regulation and licensing department shall  
22 promulgate rules pertaining to training guidelines and  
23 standardized training curriculum guidelines that financial  
24 institutions may use to train qualified individuals to review,  
25 delay and report transactions that are identified to have

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1 potentially resulted from financial exploitation. A financial  
2 institution may develop its own training as approved by the  
3 director of the division. The training required pursuant to  
4 this section shall include a description of indicators of  
5 financial exploitation of an eligible adult and the process for  
6 reporting suspected financial exploitation internally and to  
7 the division and the adult protective services division of the  
8 aging and long-term services department.

9 B. A financial institution shall provide training  
10 regarding the financial exploitation of eligible adults to  
11 qualified individuals designated by a financial institution  
12 pursuant to Section 3 of the Financial Exploitation Act.

13 SECTION 9. [NEW MATERIAL] DISCLOSURE OF INFORMATION.--A  
14 financial institution shall provide access to records or copies  
15 of records that pertain to the suspected or attempted financial  
16 exploitation of an eligible adult to the financial institutions  
17 division of the regulation and licensing department and the  
18 adult protective services division of the aging and long-term  
19 services department as part of a referral to the divisions and  
20 to law enforcement in the course of an investigation. Relevant  
21 records may include historical records or records relating to  
22 recent transactions that may serve as evidence of financial  
23 exploitation of an eligible adult. A record made available  
24 pursuant to this section shall not be considered a "public  
25 record" as defined in Subsection G of Section 14-2-6 NMSA 1978.

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1 Nothing in this section shall be construed to otherwise impede  
2 the authority of the director of the securities division of the  
3 regulation and licensing department to access or examine the  
4 records of brokers and investment advisors as otherwise  
5 provided by law.

6 SECTION 10. [NEW MATERIAL] CIVIL REMEDIES.--

7 A. An eligible adult or an attorney-in-fact,  
8 conservator, temporary conservator or trustee acting for or on  
9 behalf of an eligible adult may commence a civil action in a  
10 court of competent jurisdiction against a person suspected of  
11 financially exploiting an eligible adult in order to:

- 12 (1) return property;
- 13 (2) stop or enjoin a transaction;
- 14 (3) return any profit received from a  
15 transaction;
- 16 (4) seek compensatory damages for a  
17 transaction; or
- 18 (5) void or rescind a transaction.

19 B. To prevail on a claim made pursuant to this  
20 section, the plaintiff shall prove by a preponderance of the  
21 evidence that financial exploitation occurred.

22 C. Punitive damages shall be awarded when a  
23 plaintiff proves that the defendant committed financial  
24 exploitation and:

- 25 (1) acted with knowledge that the transaction

1 was wrongful;

2 (2) made a transaction in indifference or  
3 reckless disregard for the financial interests of the eligible  
4 adult that resulted in financial harm to the eligible adult;  
5 and

6 (3) failed to cure the alleged financial  
7 exploitation within fifteen days of receiving notice of intent  
8 to seek relief from the plaintiff.

9 D. If a plaintiff prevails against a defendant on a  
10 financial exploitation claim, the plaintiff shall recover  
11 reasonable attorney fees and any costs incurred while pursuing  
12 such relief.

13 E. A remedy obtained pursuant to this section shall  
14 not limit in any way the right, title and interest of a good  
15 faith purchaser, mortgagee, holder of a security interest or  
16 other third party who obtains an interest in property  
17 transferred from an eligible adult.

18 F. Relief obtained pursuant to this section shall  
19 not affect the value of a mortgage.

20 G. Nothing in this section shall limit any other  
21 cause of action under the laws of this state.

22 H. When a plaintiff dies during the course of a  
23 civil proceeding initiated pursuant to this section, the  
24 personal representative of the plaintiff's estate may continue  
25 with the proceeding; provided that no proceeding made pursuant

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1 to this section shall be initiated after the plaintiff's death.

2 I. A person who is found to have committed  
3 financial exploitation is liable for payment of the following  
4 to the eligible adult:

5 (1) the amount of restitution required to  
6 restore the value of the property that the eligible adult would  
7 have had if the financial exploitation had not occurred; and

8 (2) any profit the defendant received through  
9 the financial exploitation.