
A BILL FOR AN ACT

RELATING TO THE ELDERLY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that financial
2 exploitation is a fast-growing form of elder abuse. Financial
3 exploitation occurs when a person misuses or takes the assets of
4 an elderly victim for that person's own personal benefit. This
5 frequently occurs without the explicit knowledge or consent of
6 the elderly victim and deprives the elderly victim of vital
7 financial resources. Assets are commonly taken via forms of
8 deception, false pretenses, coercion, harassment, duress, and
9 threats.

10 According to the National Adult Protective Services
11 Association, recent research indicates that elder financial
12 exploitation is widespread and sometimes even deadly. The rate
13 of financial exploitation is high. One in twenty older adults
14 indicate some form of perceived financial mistreatment occurring
15 in the recent past. Elder abuse is vastly under-reported. It
16 is estimated that only one in forty-four cases is being
17 reported.



1 Ninety per cent of abusers are family members or trusted
2 individuals, such as caregivers, neighbors, friends and
3 acquaintances, attorneys, bank employees, pastors, and doctors
4 or nurses. Common ways that family members or trusted
5 individuals exploit elderly victims to gain control over the
6 elderly victim's assets include misusing a power of attorney,
7 using joint bank accounts in a manner not authorized by the
8 elderly victim, misusing ATM cards or stealing checks to
9 withdraw money, threatening to harm the elderly victim, refusing
10 to obtain care and medical services needed by the elderly
11 victim, and overcharging for in-home care provider services.

12 In Hawaii, state laws and various services protect
13 vulnerable adults, including the elderly. First, adult
14 protective services is a mandated service of the adult
15 protective and community services branch of the department of
16 human services, which provides crisis intervention without
17 regard to income, including investigation and emergency services
18 for vulnerable adults who are reported to be abused, neglected,
19 or financially exploited by others or seriously endangered due
20 to self-neglect. Second, the attorney general is authorized by
21 law to bring a civil action on behalf of the State against any



1 caregiver who commits abuse, including financial and economic
2 exploitation, of a dependent elder. Third, financial
3 institutions are required by law to report suspected financial
4 abuse that is directed toward, targeted at, or committed against
5 an elder to the department of human services and the appropriate
6 county police department if certain conditions exist. Lastly,
7 state law provides enhanced penalties for certain crimes that
8 are committed against an elderly person or the property of an
9 elderly person.

10 The purpose of this Act is to provide an additional
11 mechanism to protect the elderly against financial exploitation
12 by making the financial exploitation of an elder by a caregiver
13 a class A felony.

14 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
15 amended by adding a new section to part IV to be appropriately
16 designated and to read as follows:

17 **"§708- Financial exploitation of an elder; caregivers.**

18 (1) A caregiver commits the offense of financial exploitation
19 of an elder if the caregiver intentionally or knowingly:



- 1 (a) Takes, withholds, misappropriates, or uses an elder's
2 money, real property, or personal property without
3 authorization;
- 4 (b) Breaches a fiduciary duty to the elder resulting in
5 the unauthorized appropriation, sale, or transfer of
6 property;
- 7 (c) Takes the elder's personal assets without
8 authorization;
- 9 (d) Misappropriates, misuses, or transfers without
10 authorization, any money belonging to the elder from a
11 personal or joint account; or
- 12 (e) Uses coercion, manipulation, threats, intimidation,
13 misrepresentation, or undue influence to take,
14 appropriate, sell, transfer, or withhold an elder's
15 money, assets, real property, or personal property;
16 provided that the total value of the money, assets, or property
17 taken or used shall exceed \$50,000.
- 18 (2) Financial exploitation of an elder is a class A
19 felony.
- 20 (3) For the purposes of this section:



1 "Caregiver" means any person who has undertaken the
2 temporary or permanent care, custody, or physical control or
3 supervision of, or who has a legal or contractual duty to care
4 for the health, safety, and welfare of an elder.

5 "Elder" means a person who is sixty years of age or older."

6 SECTION 3. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 4. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Caregivers; Financial Exploitation; Elder Abuse; Penal Code

Description:

Makes financial exploitation of an elder by a caregiver a class A felony. (HB1759 HD1)

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