

ACT 196

S.B. NO. 78

A Bill for an Act Relating to Elder Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the attorney general to seek civil penalties in dependent elder abuse cases.

SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§28- Dependent elder abuse; suits by the State; civil penalties. (a)
The attorney general may bring a civil action on behalf of the State, against any caregiver who commits abuse of a dependent elder, to prevent, restrain, or remedy

such conduct. Any caregiver against whom a civil judgment is entered on a complaint alleging that the caregiver committed abuse against a dependent elder, shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each day that the abuse occurred, and the costs of investigation.

(b) For the purposes of this section:

“Abuse” means actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment.

Abuse occurs where:

(1) Any dependent elder exhibits evidence of:

- (A) Substantial or multiple skin bruising or any other internal bleeding;
- (B) Any injury to skin causing substantial bleeding;
- (C) Malnutrition;
- (D) A burn or burns;
- (E) Poisoning;
- (F) The fracture of any bone;
- (G) A subdural hematoma;
- (H) Soft tissue swelling;
- (I) Extreme physical pain; or
- (J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent elder;

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

(2) Any dependent elder has been the victim of nonconsensual sexual contact or conduct by a caregiver, including but not limited to:

- (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
- (B) Obscene or pornographic photographing, filming, or depiction;
- or
- (C) Other similar forms of sexual exploitation;

(3) Any dependent elder is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent elder pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;

(4) Any dependent elder is subject to neglect.

(5) Any dependent elder appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent elder’s person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or

(6) There is financial and economic exploitation.

“Caregiver” means any person who has undertaken the care, custody, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a dependent elder, including, but not limited to, owners, operators, employees, or staff of:

- (1) Hospitals;
- (2) Hospices;
- (3) Adult residential care homes;
- (4) Developmentally disabled domiciliary homes;
- (5) Developmentally disabled adult foster homes;
- (6) Intermediate care facilities;

- (7) Skilled nursing facilities;
- (8) Special treatment facilities;
- (9) Assisted living facilities;
- (10) Adult foster family homes;
- (11) Adult day health care centers and adult day care programs;
- (12) Independent living centers;
- (13) Long-term care facilities;
- (14) Community care facilities for the elderly;
- (15) Respite care facilities;
- (16) Foster homes; and
- (17) Private residences used for commercial purposes to care for dependent elders.

“Dependent elder” means any person sixty-two years of age or older who, because of mental or physical impairment, is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.

“Financial and economic exploitation” means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent elder’s money, real property, or personal property. “Financial and economic exploitation” may include but is not limited to:

- (1) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation, misuse, or unauthorized transfer of moneys belonging to the dependent elder from a personal or joint account; or
- (4) The intentional or negligent failure to effectively use a dependent elder’s income and assets for the necessities required for the elder’s support and maintenance.

The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

“Neglect” means the reckless disregard for the health, safety or welfare of a dependent elder, that results in injury, loss, or damage. “Neglect” includes, but is not limited to:

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter;
- (2) Failure to provide or arrange for necessary psychological, physical, or health care; except when such failure is in accordance with the dependent elder’s directive;
- (3) Failure to protect a dependent elder from known health or safety hazards; and
- (4) Failure to protect against known acts of abuse by third parties.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 24, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.