
A BILL FOR AN ACT

RELATING TO THE ELDERLY.

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

1 PART I

2 SECTION 1. Chapter 708, Hawaii Revised Statutes, is
3 amended by adding a new section to be appropriately designated
4 and to read as follows:

5 "§708- Financial exploitation of an elder. (1) A
6 person commits the offense of financial exploitation of an elder
7 if the person intentionally obtains or exerts control over the
8 assets, money, or property of an elder, and the person:

9 (a) Breaches the person's fiduciary duty, resulting in the
10 unauthorized appropriation, sale, or transfer of
11 assets, money, or property; or

12 (b) Does so without authorization and with intent to
13 deprive the elder of the assets, money, or property.

14 (2) Financial exploitation of an elder is punishable as a:

15 (a) Misdemeanor if the value of the assets, money, or
16 property is not greater than \$750;

17 (b) Class C felony if the value of the assets, money, or
18 property is \$750 or more but less than \$5,000;



- 1 (c) Class B felony if the value of the assets, money, or
- 2 property is \$5,000 or more but less than \$10,000; and
- 3 (d) Class A felony if the value of the assets, money, or
- 4 property is \$10,000 or more.

5 (3) As used in this section "elder" means any person
 6 sixty-two years of age or older."

7 SECTION 2. Section 706-660.2, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "**§706-660.2 Sentence of imprisonment for offenses against**
 10 **children, elder persons, or handicapped persons. (1)**

11 Notwithstanding section 706-669, a person who is convicted of
 12 financial exploitation of an elder under section 708- , or who
 13 in the course of committing or attempting to commit a felony,
 14 causes the death or inflicts serious or substantial bodily
 15 injury upon a person, who is:

16 [~~1~~] (a) Sixty years of age or older;

17 [~~2~~] (b) Blind, a paraplegic, or a quadriplegic; or

18 [~~3~~] (c) Eight years of age or younger;

19 and such disability is known or reasonably should be known to
 20 the defendant, shall, if not subjected to an extended term of
 21 imprisonment pursuant to section 706-662, be sentenced to a



1 mandatory minimum term of imprisonment without possibility of
2 parole as ~~[follows:]~~ provided in subsection (2).

3 (2) The mandatory minimum term of imprisonment that shall
4 be imposed pursuant to this section shall be as follows:

5 ~~[(1)]~~ (a) For murder in the second degree--fifteen years;

6 ~~[(2)]~~ (b) For a class A felony--six years, eight months;

7 ~~[(3)]~~ (c) For a class B felony--three years, four months;

8 or

9 ~~[(4)]~~ (d) For a class C felony--one year, eight months."

10 PART II

11 SECTION 3. Section 412:3-114.5, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "~~[+]§412:3-114.5[-]~~ **Mandatory reporting of suspected**
14 **financial abuse of an elder.** (a) A financial institution shall
15 report suspected financial abuse that is directed towards,
16 targets, or is committed against an elder to the ~~[department of~~
17 ~~human services]~~ appropriate local or federal law enforcement
18 entities if:

19 (1) In connection with providing financial services to the
20 elder, the officer or employee of a financial
21 institution:

22 (A) Has direct contact with the elder; or



1 (B) Reviews or approves the elder's financial
2 documents, records, or transactions; and

3 (2) The officer or employee, within the scope of
4 employment or professional practice:

5 (A) Observes or has knowledge of an incident the
6 officer or employee believes in good faith
7 appears to be financial abuse; or

8 (B) In the case of officers or employers who do not
9 have direct contact with the elder, has a good faith suspicion
10 that financial abuse has occurred or may be occurring, based
11 solely on the information present at the time of reviewing or
12 approving the document, record, or transaction.

13 (b) Suspected financial abuse shall be reported
14 immediately to the [department] appropriate local or federal law
15 enforcement entities by telephone and then by written report
16 sent by electronic mail within five business days[-] after the
17 initial report, to the appropriate law enforcement entities.

18 ~~[(c) Upon notification by a financial institution of~~
19 ~~suspected financial abuse, the department, in a timely manner,~~
20 ~~shall determine whether the department has jurisdiction over the~~
21 ~~elder involved; and if not, shall notify the financial~~
22 ~~institution, which shall then notify the proper local law~~



1 ~~enforcement agency immediately by telephone and forward the~~
2 ~~written report to the agency within three business days. A~~
3 ~~financial institution shall not be liable for failing to report~~
4 ~~suspected financial abuse to a local law enforcement agency in~~
5 ~~cases in which the department fails to notify the institution of~~
6 ~~the department's lack of jurisdiction.~~

7 ~~(d)]~~ (c) Notwithstanding any other state law to the
8 contrary, including but not limited to laws concerning
9 confidentiality, any person, including the financial
10 institution, who:

11 (1) Participates in the making of a report pursuant to
12 this section; and

13 (2) Believes, in good faith, that the action is warranted
14 by facts known to that person,

15 shall have immunity from any liability, civil or criminal, that
16 might be otherwise incurred or imposed by or as a result of the
17 making of the report. Any person making the report shall have
18 the same immunity with respect to participation in any judicial
19 proceeding resulting from the report.

20 (d) The commissioner of financial institutions may
21 prescribe standardized forms to facilitate reporting under this
22 section.



1 (e) For the purposes of this section:

2 [~~"Department" means the department of human services.~~]

3 "Elder" means a person who is sixty-two years of age or
4 older.

5 "Financial abuse" means financial abuse or economic
6 exploitation."

7 PART III

8 SECTION 4. Chapter 663, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§663- Suits by elders; financial exploitation; amount
12 of recovery. (a) Any elder who is injured by an act of
13 financial exploitation or any person authorized to act on behalf
14 of the elder may file a claim in family court or any other court
15 of competent jurisdiction against a person or persons alleged to
16 have perpetrated the financial exploitation for damages
17 sustained by the elder.

18 (b) If it is proven by a preponderance of the evidence
19 that a person has engaged in financial exploitation, the family
20 court or other court of competent jurisdiction shall award
21 reasonable attorney's fees and costs to the elder, in addition



1 to compensatory damages and all other remedies otherwise
2 provided by law.

3 (c) In addition to any award made under subsection (b), if
4 it is proven by clear and convincing evidence that the financial
5 exploitation was done wilfully, wantonly, or maliciously, the
6 family court or other court of competent jurisdiction may also
7 award punitive damages to the elder.

8 (d) The remedies provided in this section shall not be
9 considered exclusive and shall not preclude any other criminal,
10 civil, or administrative remedy.

11 (e) As used in this section:

12 "Elder" means any person sixty-two years of age or older.

13 "Financial exploitation" shall have the same meaning as it
14 has in section 346-222."

15 PART IV

16 SECTION 5. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 7. This Act shall take effect on January 7, 2059.



Report Title:

Financial Exploitation of Dependent Elder; Penalties; Tort
Actions

Description:

Creates the crime of financial exploitation of an elder and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to law enforcement. Creates a private right of action for financial exploitation of an elder. Effective 1/7/2059. (HD2192 HD2)

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