

JAN 20 2012

---

---

# A BILL FOR AN ACT

RELATING TO THE ELDERLY.

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

**PART I**

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

"§708- Financial and economic exploitation of a dependent elder. (1) A caregiver commits the offense of financial and economic exploitation of a dependent elder if the caregiver intentionally, or with wanton disregard for the well-being of the dependent elder, takes, withholds, misappropriates, or uses a dependent elder's money, real property, or personal property, including:

(a) Breaches of fiduciary duty, such as the misuse of a power of attorney or the misuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;

(b) The unauthorized taking of personal assets;



1        (c) The misappropriation or misuse or unauthorized  
2            transfer of moneys belonging to the dependent elder's  
3            from a personal or joint account; or

4        (d) The failure to effectively use a dependent elder's  
5            income and assets for the necessities required for the  
6            dependent elder's support and maintenance.

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

9            (2) Financial exploitation of a dependent elder is  
10        punishable as a:

11            (a) Misdemeanor if the value of the assets, money, or  
12            property is not greater than \$500;

13            (b) A class C felony if the value of the assets, money, or  
14            property is \$500 or more but less than \$5,000;

15            (c) A class B felony if the value of the assets, money, or  
16            property is \$5,000 or more but less than \$10,000; and

17            (d) A class A felony if the value of the assets, money, or  
18            property is \$10,000 or more.

19            (3) As used in this section:

20            "Caregiver" means any person who has undertaken the care,  
21        custody, or physical control of, or who has a legal or  
22        contractual duty, to care for the health, safety, and welfare of



- 1 a dependent elder, including owners, operators, employees, or  
2 staff of:
- 3     (a) Hospitals;
  - 4     (b) Hospices;
  - 5     (c) Adult residential care homes;
  - 6     (d) Developmentally disabled domiciliary homes;
  - 7     (e) Developmentally disabled adult foster homes;
  - 8     (f) Intermediate care facilities;
  - 9     (g) Skilled nursing facilities;
  - 10    (h) Special treatment facilities;
  - 11    (i) Assisted living facilities;
  - 12    (j) Adult foster family homes;
  - 13    (k) Adult day health care centers and adult day care  
14    programs;
  - 15    (l) Independent living centers;
  - 16    (m) Long-term care facilities;
  - 17    (n) Community care facilities for the elderly;
  - 18    (o) Respite care facilities;
  - 19    (p) Foster homes; and
  - 20    (q) Private residences used for commercial purposes to  
21    care for dependent elders.



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

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

7       "**§706-660.2 Sentence of imprisonment for offenses against**  
8 **children, elder persons, or handicapped persons.**

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

- 14       (1) Sixty years of age or older;  
15       (2) Blind, a paraplegic, or a quadriplegic; or  
16       (3) Eight years of age or younger;

17 and such disability is known or reasonably should be known to  
18 the defendant, shall, if not subjected to an extended term of  
19 imprisonment pursuant to section 706-662, be sentenced to a  
20 mandatory minimum term of imprisonment without possibility of  
21 parole as follows:

- 22       (1) For murder in the second degree--fifteen years;



- 1 (2) For a class A felony--six years, eight months;
- 2 (3) For a class B felony--three years, four months; or
- 3 (4) For a class C felony--one year, eight months."

4 SECTION 3. This part does not affect rights and duties  
5 that matured, penalties that were incurred, and proceedings that  
6 were begun before its effective date.

7 **PART II**

8 SECTION 4. Section 327E-3, Hawaii Revised Statutes, is  
9 amended by amending subsections (b) to read as follows:

10 "(b) An adult or emancipated minor may execute a power of  
11 attorney for health care, which may authorize the agent to make  
12 any health-care decision the principal could have made while  
13 having capacity. The power remains in effect notwithstanding  
14 the principal's later incapacity and may include individual  
15 instructions. Unless related to the principal by blood,  
16 marriage, civil union, or adoption, an agent may not be an  
17 owner, operator, or employee of the health-care institution at  
18 which the principal is receiving care. The power shall be in  
19 writing, contain the date of its execution, be signed by the  
20 principal, and be witnessed by one of the following methods:

- 21 (1) Signed by at least two individuals[7] unrelated by  
22 blood, marriage, civil union, or adoption, each of



1           whom witnessed either the signing of the instrument by  
2           the principal or the principal's acknowledgment of the  
3           signature of the instrument; or

4           (2) Acknowledged before a notary public at any place  
5           within this State."

6           SECTION 5. Section 412:3-114.5, Hawaii Revised Statutes,  
7           is amended by amending subsections (b) and (c) to read as  
8           follows:

9           "(b) Suspected financial abuse shall be reported  
10           immediately to the adult protective services of the department  
11           and the proper local law enforcement agency initially by  
12           telephone and by electronic mail and then by written report sent  
13           by electronic mail within five business days[-] after the  
14           initial report, to the department and the local law enforcement  
15           agency.

16           (c) Upon notification by a financial institution of  
17           suspected financial abuse, the department, in a timely manner,  
18           shall determine whether the department has jurisdiction over the  
19           elder involved; and if not, shall notify the financial  
20           institution[~~, which shall then notify the proper local law~~  
21           ~~enforcement agency]~~ and the local law enforcement agency  
22           immediately by telephone [~~and forward the written report to the~~



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

PART III

7 SECTION 6. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY: Anzanne Chun Oakland

Michelle

Clarence W. Michikawa

John M.

Amid Y. J.

Yee Chun J.

J.

Will Eyo



# S.B. NO. 2314

**Report Title:**

Financial Exploitation of Dependent Elder

**Description:**

Creates the crime of financial exploitation of dependent elder and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to the adult protective services and the county police. Requires two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

