

JAN 25 2012

A BILL FOR AN ACT

RELATING TO FINANCIAL ABUSE OF ELDERS.

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

1 SECTION 1. Section 412:3-114.5, Hawaii Revised Statutes,
2 is amended to read as follows:

3 " ~~[+] §412:3-114.5 [+~~ **Mandatory reporting of suspected**
4 **financial abuse of an elder.** (a) A financial institution shall
5 report suspected financial abuse that is directed towards,
6 targets, or is committed against an elder to ~~[the department of~~
7 ~~human services]~~ the appropriate police department if:

8 (1) In connection with providing financial services to the
9 elder, the officer or employee of a financial
10 institution:

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

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

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

16 (A) Observes or has knowledge of an incident the
17 officer or employee believes in good faith
18 appears to be financial abuse; or

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

7 (b) Suspected financial abuse shall be reported
8 immediately [~~to the department~~] by telephone [~~and by written~~
9 ~~report sent within five business days.~~], or as soon as
10 practicably possible, and by written report sent within two
11 business days, to the appropriate police department.

12 ~~[(c) Upon notification by a financial institution of~~
13 ~~suspected financial abuse, the department, in a timely manner,~~
14 ~~shall determine whether the department has jurisdiction over the~~
15 ~~elder involved; and if not, shall notify the financial~~
16 ~~institution, which shall then notify the proper local law~~
17 ~~enforcement agency immediately by telephone and forward the~~
18 ~~written report to the agency within three business days. A~~
19 ~~financial institution shall not be liable for failing to report~~
20 ~~suspected financial abuse to a local law enforcement agency in~~
21 ~~cases in which the department fails to notify the institution of~~
22 ~~the department's lack of jurisdiction.]~~

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1 ~~[(d)]~~ (c) Notwithstanding any other state law to the
2 contrary, including but not limited to laws concerning
3 confidentiality, any person, including the financial
4 institution, who:

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

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

9 shall have immunity from any liability, civil or criminal, that
10 might be otherwise incurred or imposed by or as a result of the
11 making of the report. Any person making the report shall have
12 the same immunity with respect to participation in any judicial
13 proceeding resulting from the report.

14 ~~[(e)]~~ (d) For the purposes of this section:

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

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

18 "Financial abuse" means financial abuse or economic
19 exploitation."

20 SECTION 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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S.B. NO. 2807

Report Title:

Financial Abuse; Elder

Description:

Amend section 412:3-114.5, Hawaii Revised Statutes, to require financial institutions to report instances of suspected financial abuse of an elder directly to the appropriate police department instead of the Department of Human Services.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO FINANCIAL ABUSE OF ELDERS.

PURPOSE: To establish a reporting requirement on the part of Hawaii financial institutions to report suspected instances of financial abuse directed towards, targeting, or committed against an elder directly to the appropriate police department instead of the Department of Human Services.

MEANS: Amend section 412:3-114.5, Hawaii Revised Statutes.

JUSTIFICATION: Reported instances of financial abuse of elders have become increasingly widespread throughout the United States. Many states have enacted specific legislation in an attempt to effectively address and curtail this disturbing trend.

The officers and employees of a financial institution are in a unique position to observe behavior or activity relating to financial transactions involving an elder which may cause such officer or employee to suspect that financial abuse may have occurred or is occurring.

Section 412:3-114.5, Hawaii Revised Statutes, which went into effect on May 24, 2007, required financial institutions to first report instances of suspected financial abuse directly to the Department of Human Services. The Department is required to make a determination on whether it has jurisdiction over the elder involved; and if not, the Department is to notify the financial institution, which then is required to notify the proper local law enforcement agency immediately.

The Department of Human Services has the expertise to investigate reports of abuse of a vulnerable adult that have been reported pursuant to section 346-224, Hawaii Revised Statutes. Prior to the enactment of section 412:3-114.5, Hawaii Revised Statutes, the Department was able to properly attend to reports of physical, psychological, and sexual abuse, caregiver neglect, self-neglect, and financial exploitation which generally involved caregivers' misuse of funds intended for support of the vulnerable adult.

Since the enactment of section 412:3-114.5 in 2007, the Department has experienced a substantial increase in the number of financial abuse reports from financial institutions. In State Fiscal Year 2007-2008, the Department received 18 reports from financial institutions. In State Fiscal Year 2010-2011, 99 reports were received from financial institutions, an increase of 450 per cent.

Notwithstanding the increase in the number of reports, it is the complexity of the types of financial abuse cases reported by the financial institutions that the Department is not equipped to properly investigate and prosecute. The Department does not have the necessary expertise to investigate financial abuse against elders as reported by financial institutions, nor does the Department have the authority to prosecute such perpetrators of abuse.

This bill will make it mandatory for any officer or employee of a financial institution to report, without delay, a suspected incident of financial abuse, by telephone, and also by filing a written report within two working days, directly to the appropriate police department, instead of the Department of Human Services. The police department has the expertise to properly investigate instances of financial

abuse that the Department of Human Services does not have.

Impact on the public: This legislation will put in place a more efficient and effective mechanism to report and curtail instances of suspected financial abuse directed towards, targeting, or committed against elders. As such, it is an important consumer protection measure.

Impact on the department and other agencies: The Department's Adult Protective Services staff will be better able to focus on their their responsibility to respond to reports of physical, psychological or sexual abuse and caregiver or self-neglect of vulnerable adults, as well as financial abuse of vulnerable adults as reported pursuant to section 346-224, Hawaii Revised Statutes.

The police department will be tasked with receiving any reports of suspected financial abuse for investigation and subsequent prosecution.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HMS 601.

OTHER AFFECTED
AGENCIES: Local law enforcement agencies.

EFFECTIVE DATE: Upon approval.