
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. The legislature finds that Hawaii's elderly
3 population is growing in size, and that financial exploitation
4 of elderly persons is on the rise. The legislature also finds
5 that it is important to respect our elders or kupuna, who have
6 contributed their hard work, knowledge, and wisdom to our
7 society. Therefore, in keeping with these values, it is
8 essential that we honor our elders by protecting them from
9 financial exploitation and abuse.

10 The purpose of this Act is to prevent and deter financial
11 exploitation and abuse of elders by creating the offense of
12 financial exploitation of an elder, providing enhanced penalties
13 for those convicted of the offense, and requiring financial
14 institutions to report instances of suspected financial abuse of
15 an elder directly to the police.

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



- 1 "§708- Financial exploitation of an elder. (1) A
2 person commits the offense of financial exploitation of an elder
3 if the person intentionally obtains or exerts control over the
4 assets, money, or property of an elder, and the person:
- 5 (a) Knows that the elder is sixty-two years of age or
6 older, or recklessly disregards the risk thereof; and
- 7 (b) Breaches the person's fiduciary duty to the elder,
8 resulting in the unauthorized appropriation, sale, or
9 transfer of assets, money, or property of the elder;
10 or
- 11 (c) Does so without authorization and with intent to
12 deprive the elder of assets, money, or property.
- 13 (2) Financial exploitation of an elder is punishable as a:
- 14 (a) Misdemeanor if the value of the assets, money, or
15 property is not greater than \$750;
- 16 (b) Class C felony if the value of the assets, money, or
17 property is \$750 or more but less than \$5,000;
- 18 (c) Class B felony if the value of the assets, money, or
19 property is \$5,000 or more but less than \$10,000; and
- 20 (d) Class A felony if the value of the assets, money, or
21 property is \$10,000 or more.



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

3 SECTION 3. Section 706-660.2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§706-660.2 Sentence of imprisonment for offenses against**
6 **children, elder persons, or handicapped persons. (1)**

7 Notwithstanding section 706-669, a person who is convicted of
8 financial exploitation of an elder under section 708- , or
9 who[7] in the course of committing or attempting to commit a
10 felony, causes the death or inflicts serious or substantial
11 bodily injury upon a person who is:

12 [~~1~~] (a) Sixty years of age or older;

13 [~~2~~] (b) Blind, a paraplegic, or a quadriplegic; or

14 [~~3~~] (c) Eight years of age or younger;

15 and such disability is known or reasonably should be known to
16 the defendant, shall, if not subjected to an extended term of
17 imprisonment pursuant to section 706-662, be sentenced to a
18 mandatory minimum term of imprisonment without possibility of
19 parole as [~~follows~~] provided in subsection (2).

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

22 [~~1~~] (a) For murder in the second degree--fifteen years;



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

PART II

6 SECTION 4. Section 412:3-114.5, Hawaii Revised Statutes,
7 is amended to read as follows:

8 "[~~+~~]**§412:3-114.5**[~~+~~] **Mandatory reporting of suspected**

9 **financial abuse of an elder.** (a) A financial institution shall
10 report suspected financial abuse that is directed towards,
11 targets, or is committed against an elder to the appropriate
12 police department [~~of human services~~] and may report suspected
13 financial abuse to the department if:

14 (1) In connection with providing financial services to the
15 elder, the officer or employee of a financial
16 institution:

- 17 (A) Has direct contact with the elder; or
- 18 (B) Reviews or approves the elder's financial
- 19 documents, records, or transactions; and

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



1 (A) Observes or has knowledge of an incident the
2 officer or employee believes in good faith
3 appears to be financial abuse; or

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

10 (b) Suspected financial abuse shall be reported
11 immediately [~~to the department~~] by telephone [~~and by written~~
12 ~~report sent within five business days.~~] and by electronic
13 filing, or as soon as practicably possible, and by written
14 report sent within two business days, to the appropriate police
15 department; provided that suspected financial abuse may be
16 reported to the department of human services.

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



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

6 (c) The department shall inform the appropriate police
7 department of all reports received by the department regarding a
8 case of financial abuse; provided that the name of the person
9 who reported the case of financial abuse shall be released to
10 the police department pursuant only to court order or the
11 person's consent.

12 (d) The department shall inform the appropriate police
13 department or office of the prosecuting attorney of any relevant
14 information concerning a case of financial abuse when the
15 information is required by the police department or the office
16 of the prosecuting attorney for the investigation or prosecution
17 of that case; provided that the name of the person who reported
18 the case of financial abuse shall be released to the police
19 department or the office of the prosecuting attorney pursuant
20 only to court order or the person's consent.

21 ~~[(d)]~~ (e) Notwithstanding any other state law to the
22 contrary, including but not limited to laws concerning



1 confidentiality, any person, including the financial
2 institution, who:

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

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

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

12 [~~(e)~~] (f) For the purposes of this section:

13 "Department" means the department of human services.

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

16 "Financial abuse" means financial abuse or economic
17 exploitation."

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

21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



H.B. NO. 303

1 SECTION 7. This Act shall take effect on July 1, 2013.

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H.B. NO. 303

Report Title:

Financial Exploitation of an Elder; Mandatory Reporting

Description:

Creates offense of financial exploitation of an elder and provides enhanced penalties. Requires financial institutions to report suspected financial abuse of an elder to the appropriate police department and allows suspected financial abuse to be reported to the Department of Human Services. Requires the Department of Human Services to share records with police department or office of the prosecuting attorney.

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