

JAN 20 2017

A BILL FOR AN ACT

RELATING TO THE ELDERLY.

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

1 SECTION 1. The legislature finds that financial
2 exploitation is a fast growing form of elder abuse. Financial
3 exploitation occurs when a person misuses or takes the assets of
4 an elderly victim for that person's own personal benefit. This
5 frequently occurs without the explicit knowledge or consent of
6 the elderly victim and deprives the elderly victim of vital
7 financial resources. Assets are commonly taken via forms of
8 deception, false pretenses, coercion, harassment, duress, and
9 threats.

10 According to the National Adult Protective Services
11 Association, recent research indicates that elder financial
12 exploitation is widespread, expensive, and sometimes even
13 deadly. The rate of financial exploitation is high with one in
14 twenty elderly persons indicating some form of perceived
15 financial mistreatment occurring in the recent past. Elder
16 abuse is vastly under-reported with only one in forty-four cases
17 of financial abuse being reported.



1 Ninety per cent of abusers are family members or trusted
2 individuals, such as caregivers, neighbors, friends and
3 acquaintances, attorneys, bank employees, pastors, and doctors
4 or nurses. Common ways a family member or trusted individual
5 exploit the elderly victim to gain control of over the elderly
6 victim's assets, including using a power of attorney, taking
7 advantage of joint bank accounts, using ATM cards or stealing
8 checks to withdraw money, threatening to harm the elderly
9 victim, refusing to obtain needed care and medical services, and
10 overcharging for services by in-home care providers.

11 In Hawaii, state laws and various services protect
12 vulnerable adults, including the elderly. First, the adult
13 protective services program is a mandated service of the adult
14 protective and community services branch of the department of
15 human services that provides crisis intervention, without regard
16 to income, including investigation and emergency services for
17 vulnerable adults who are reported to be abused, neglected, or
18 financially exploited by others or seriously endangered due to
19 self-neglect. Second, the attorney general is authorized by law
20 to bring a civil action on behalf of the State against any
21 caregiver who commits abuse, including financial and economic



1 exploitation, of a dependent elder. Third, financial
 2 institutions are required by law to report suspected financial
 3 abuse that is directed toward, targeted at, or is committed
 4 against an elder to the department of human services and the
 5 appropriate county police department if certain conditions
 6 exist. Lastly, state law provides enhanced penalties for
 7 certain crimes that are committed against an elderly person or
 8 the property of an elderly person.

9 The purpose of this Act is to provide an additional
 10 mechanism to protect the elderly against financial exploitation
 11 by making the financial exploitation of an elder by a caregiver
 12 a class felony.

13 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
 14 amended by adding a new section to part IV to be appropriately
 15 designated and to read as follows:

16 "§708- Financial exploitation of an elder; caregivers.

17 (1) A caregiver commits the offense of financial exploitation
 18 of an elder if the caregiver intentionally or knowingly
 19 financially exploits the elder; provided that the total value of
 20 the money or property taken or used shall be more than
 21 \$_____.



1 (2) Financial exploitation of an elder is a class
2 felony.

3 (3) For the purposes of this section:

4 "Caregiver" means any person who has undertaken the
5 temporary or permanent care, custody, or physical control or
6 supervision of, or who has a legal or contractual duty to care
7 for the health, safety, and welfare of an elder.

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

10 "Financial exploitation" means the taking, withholding,
11 misappropriation, or use of an elder's money, real property, or
12 personal property. "Financial exploitation" may include but is
13 not limited to:

14 (a) Breaches of fiduciary relationships, such as the
15 misuse of a power of attorney or the abuse of
16 guardianship privileges, resulting in the unauthorized
17 appropriation, sale, or transfer of property;

18 (b) The unauthorized taking of personal assets;

19 (c) The misappropriation, misuse, or unauthorized transfer
20 of moneys belonging to the elder from a personal or
21 joint account; or



1 (d) The failure to effectively use an elder's income and
2 assets for the necessities required for the elder's
3 support and maintenance.

4 "Financial exploitation" may be committed by using coercion,
5 manipulation, threats, intimidation, misrepresentation, or undue
6 influence."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 4. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 539

Report Title:

Kupuna Caucus; Elderly; Caregivers; Financial Exploitation;
Elder Abuse; Penal Code

Description:

Makes financial exploitation of an elder by a caregiver a class
felony. Defines "caregiver", "elder", and "financial
exploitation".

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

