

HB432 HD2

Measure Title: RELATING TO THE ELDERLY.

Report Title: Kupuna Caucus; Elderly; Caregivers; Financial Exploitation; Elder Abuse; Penal Code

Description: Makes financial exploitation of an elder by a caregiver a felony. Defines "caregiver", "elder", and "financial exploitation". (HB432 HD2)

Current Referral: HMS/CPH, JDL

Introducer(s): MORIKAWA, AQUINO, BELATTI, CACHOLA, CREAGAN, DECOITE, EVANS, GATES, HAR, HASHEM, ICHIYAMA, KEOHOKALOLE, MCKELVEY, MIZUNO, SOUKI, TAKAYAMA, THIELEN, Oshiro, Todd

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PROSECUTING ATTORNEY

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FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORBLE JOSH GREEN, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES**

**THE HONORABLE ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND HEALTH**

**Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i**

March 20, 2017

RE: H.B. 432, H.D. 2; RELATING TO THE ELDERLY.

Chair Green, Chair Baker, Vice-Chair Chang, Vice-Chair Nishihara and members of the Senate Committee on Human Services and members of the Senate Committee on Commerce, Consumer Protection, and Health, the Department of the Prosecuting Attorney submits the following testimony in support of the intent with concerns.

The purpose of H.B. 432, H.D. 2, is to provide additional mechanisms within the Hawai'i Revised Statutes, to provide protection for elder persons who are the target of *financial* exploitation. Specifically, the bill seeks to protect elderly persons from caregivers who abuse their fiduciary duty and financially exploit elders.

Although the law currently provides enhanced penalties for felonies that cause death or serious bodily injury to an elderly person, there are no such penalties for targeting elderly persons for financial crimes. Nevertheless, financial crimes can be just as devastating as physical injuries, leaving victims in isolation, vulnerable and scared, at a time in their life when they are typically less capable and have less time to recover emotionally or rebuild their finances. Moreover, financial crimes against the elderly are not only committed by strangers--via internet, mail, investment schemes and other methods--but also by relatives and caregivers, who have more opportunity to take an elder's money, property, and valuables; deny companionship, services or medical care; or cash pension or social security checks without permission.

The Department supports the intent of H.B. 432, H.D. 2, however, as currently proposed, the Department expresses concerns in the following area. Currently, H.B. 432, H.D. 2, has a blank threshold dollar amount and felony classification. The Department would suggest implementing a threshold of \$50,000 while classifying the offense as nothing less than a Class A felony. This proposal is to ensure that if codified, this particular statute would be effectively used. Currently, Hawaii's theft statutes cover financial exploitation cases and involve the proof of fewer elements. Theft in the First Degree and Theft in the Second Degree are classified as class B and class C felonies respectively. If H.B. 432, H.D. 2 was enacted as a class B or C felony, use of the statute would be near non-existent. This concern is illustrated by the use of Act 244, Session 2012 which created §708-8303, H.R.S., Unlicensed Contractor Fraud in the First Degree. Initially the proposed bill classified the charge of Unlicensed Contractor Fraud in the First Degree as a class A felony offense. However, various amendments were made and the bill passed in the current form classifying the charge as a class B felony. Since its enactment in 2012, the charge of Unlicensed Contractor Fraud appears to only be used on a couple of cases statewide. This infrequent use of the charge is directly related to the fact that our theft statutes and penalty sections sufficiently address Unlicensed Contractor Fraud cases and require fewer elements to prove. In addition, the Department believes that a threshold of \$50,000 would uphold the very essence of the proposed bill by illustrating the seriousness and damaging effects that financial exploitation has on the elderly.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 432, H.D. 2. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

LOUIS-M. KEALOHA
CHIEF

CARY OKIMOTO
JERRY INOUE
DEPUTY CHIEFS

ST-DA

OUR REFERENCE

March 20, 2017

The Honorable Josh Green, Chair
and Members
Committee on Human Services
The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce, Consumer
Protection, and Health
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chairs Green and Baker and Members:

SUBJECT: House Bill No. 432, H.D. 2, Relating to the Elderly

I am Stason Tanaka, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 432, H.D. 2, Relating to the Elderly.

This bill appropriately provides an additional mechanism to protect the elderly against financial exploitation by a caregiver by making the penalty for anyone who violates this chapter a felony offense.

We believe this legislation will improve compliance among caregivers who are entrusted to care for the health, safety, and welfare of an elder. This bill will also provide better protection to the elderly and deter violations of the chapter.

The HPD urges you to support House Bill No. 432, H.D. 2, Relating to the Elderly.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in black ink, appearing to read "Cary Okimoto", written over a horizontal line.

Cary Okimoto
Acting Chief of Police

Sincerely,

A handwritten signature in black ink, appearing to read "Stason Tanaka", written in a cursive style.

Stason Tanaka, Captain
Criminal Investigation Division



The Senate
Committees on Human Services and Commerce, Consumer Protection and Health
Monday, March 20, 2017
2:50 p.m.
Conference Room 016

RE: **HB 432, HD2, RELATING TO THE ELDERLY**

To: Senator Josh Green, Chair
Senator Rosalyn Baker, Chair

AARP is a membership organization of people age fifty and over with nearly 150,000 members in Hawaii. AARP advocates and provides information on issues that matter to our kupuna and their families, including affordable, accessible, quality healthcare, financial resiliency, and livable communities.

HB 432, HD2 makes the financial exploitation of an elder by a caregiver a class felony.

AARP Hawaii **supports HB 432, HD2.**

Every year, older Americans are robbed and exploited \$3 billion of their personal finances.* These financial exploitations and abuses range from forged signatures, coercion to sign a will, identity thefts, harassment, threats to false pretenses. When the perpetrator is a trusted family member or paid caregiver, the impact to the older victim is even more devastating. These heinous acts not only rob people of their financial security, but also breach their trust and affect the victim's emotional health and personal sense of safety.

AARP fully supports this bill to crack down on abuse and financial exploitation, and strengthen the protection of Hawaii's kupuna.

Thank you for the opportunity to testify.

*AARP, "Fighting Against Elder Abuse and Exploitation", March 4, 2015

National Active and Retired Federal Employees Association (NARFE)
Hawaii State Federation of Chapters
e-mail: JMatsuo368@hawaii.rr.com

LEGISLATIVE TESTIMONY
IN SUPPORT OF HB432,HD2, RELATING TO THE ELDERLY
Hearing, Monday, March 20, 2:50 p.m., Room 016

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair
and members of the Committee on Human Services

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
And members of the Committee on Commerce, Consumer Protection, and Health

Aloha

The National Active and Retired Federal Employees Association (NARFE), Hawaii State Federation of Chapters, testifies in support of HB 432 HD2 that would make financial exploitation of an elder by a caregiver a class felony.

We appreciate that this law would provide additional protection for the elderly against financial exploitation and deter individuals from taking advantage of elders.

Mahalo for your consideration of our testimony.

Respectfully

Joyce Matsuo
1st Vice President/Legislation

About NARFE

The National Active and Retired Federal Employees Association (NARFE) is dedicated to protecting and enhancing the earned pay, retirement and health care benefits of federal employees, retirees and their survivors. Founded in 1921, NARFE's legacy spans more than 90 years – working tirelessly in support of our members before the Office of Personnel Management, members of Congress and the White House. The Hawaii State Federation of Chapters has 10 chapters that are located on Kauai, Hawaii, O'ahu and Maui.



hawaii family forum

ONLINE SUBMITTAL
Hearing on: Monday, March 20, 2017
Conference Room #016

DATE: March 16, 2017

TO: [COMMITTEE ON HUMAN SERVICES](#)

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

[COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH](#)

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

FROM: Eva Andrade, President

RE: **Strong Support for HB 432 HD2 Relating to the Elderly**

Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening life, family and religious freedom in Hawaii. We are committed to defending the family, including the elderly population. This bill, if passed into law, will protect Hawaii's kupuna against financial exploitation by establishing a felony offense for the financial exploitation of an elder by a caregiver. We support protecting our aging kupuna from predators and abusers.

- In a study of 4,156 older adults, family members were the most common perpetrators of financial exploitation of older adults (FEOA) (57.9%), followed by friends and neighbors (16.9%), followed by home care aides (14.9%)ⁱ
- Financial exploitation causes large economic losses for businesses, families, elders, and government programs, and increases reliance on federal health care programs such as Medicaidⁱⁱ
- Those with cognitive incapacities suffer 100% greater economic losses than those without such incapacities.ⁱⁱⁱ
- Financial abuse by itself costs older Americans over \$2.6 billion dollars annually.^{iv}

Most advocates for the elderly will admit that financial exploitation is a fast-growing form of abuse of seniors and adults with disabilities. In some instances, the abuse may even turn deadly. Each of us must play a role in giving a voice to those who may be experiencing any form of abuse.

Mahalo for the opportunity to submit testimony.

ⁱ Peterson, J., Burnes, D., Caccamise, P., Mason, A., Henderson, C., Wells, M., & Lachs, M. (2014). Financial exploitation of older adults: a population-based prevalence study. *Journal of General Internal Medicine*, 29(12), 1615-23. doi: 10.1007/s11606-014-2946-2

ⁱⁱ U.S. Department of Justice, Department of Health and Human Services, Connolly, M.T., Brandl, B., & Breckman, R. (2014). *The Elder Justice Roadmap: A Stakeholder Initiative to Respond to an Emerging Health, Justice, Financial and Social Crisis*. Retrieved from [The Elder Justice Road Map \(PDF\)](#).

ⁱⁱⁱ Gunther, J. (2011). *The 2011 Utah Economic Cost of Elder Financial Exploitation*.

^{iv} MetLife Mature Market Institute, The National Committee for the Prevention of Elder Abuse, The Center for Gerontology at Virginia Polytechnic Institute and State University. *Broken Trust: Elders, Family & Finances (PDF)*.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 19, 2017 4:42 PM
To: HMS Testimony
Cc: deborah.stone-walls@co.maui.hi.us
Subject: *Submitted testimony for HB432 on Mar 20, 2017 14:50PM*

HB432

Submitted on: 3/19/2017

Testimony for HMS/CPH on Mar 20, 2017 14:50PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Stone-Walls	Maui County Office on Aging	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Dear Chair Morikawa and Members:

SUBJECT: House Bill No. 432, Relating to the Elderly

I want to first thank the members of this board for listening to my testimony. In regards to house bill no. 432, I fully support it. I find it extremely disturbing that we even have to acknowledge this type of behavior. We all want to believe that once we are in our later years that no one will ever take advantage of us, but that fact is that people are taking advantage of our elderly every day. This bill will hopefully deter individuals from exploiting our elderly.

This bill hits home because of how my grandmother got treated just before she passed. Her daughter, which is my aunt took control of her finances and began filling her own pockets and not using my grandmother's money for her own needs. This when on for many years before anyone figured out what was going on.

Taking advantage and exploiting the elderly for financial gain is sickening and these individuals need to pay. Moving this consequence to a felony charge is exactly what we need to be doing.

Chair Morikawa and other members of the committee,

Alyssa Imai

Student at the Mryon B Thompson School of Social Work

Monday 3/20/17

I am in support of HB 432 HD2.

As we know the elderly population in Hawaii is growing and the number of care homes in Hawaii are limited. This causes most elderly to live with families and puts them at greater risk for elderly abuse. Most elderly abuse is caused by family members and that causes them to have a harder time speaking up about it. It can be in forms of family members saying "I'll take you to the store if you pay for my groceries as well." An example that happens in care homes is taking money from an elder.

This is why I am in support of this bill. Elders are one of the most vulnerable population and with the numbers growing more elders are at risk every year. Elders should be valued but they are often taken for granted. We need to protect our elders from all forms of abuse.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 16, 2017 9:47 PM
To: HMS Testimony
Cc: mkhan@hawaiiantel.net
Subject: Submitted testimony for HB432 on Mar 20, 2017 14:50PM

HB432

Submitted on: 3/16/2017

Testimony for HMS/CPH on Mar 20, 2017 14:50PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments: I am an elder and hope to never have to experience financial exploitation by caregivers, family members, or others. Having said that, I am aware of elders who have been exploited, so fully support this proposed legislation.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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