

JAN 23 2020

A BILL FOR AN ACT

RELATING TO FINANCIAL EXPLOITATION.

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

1 SECTION 1. Chapter 346, Hawaii Revised Statutes, is
2 amended by adding a new section to part X to be appropriately
3 designated and to read as follows:
4 "§346- Right to proceed for private litigants; financial
5 exploitation; amount of recovery. (a) A vulnerable adult who
6 has been financially exploited may commence an action against
7 any perpetrator and may recover actual and punitive damages for
8 such financial exploitation. The action may be brought by the
9 vulnerable adult or that person's guardian, by a person or
10 organization acting on behalf of the vulnerable adult with the
11 consent of that person or that person's guardian, or by the
12 personal representative of the estate of a deceased victim
13 without regard to whether the cause of death resulted from the
14 financial exploitation.
15 (b) The civil action may be brought in any court of
16 competent jurisdiction where the violation is alleged to have
17 occurred.



1 (c) The court may award the prevailing party actual or
2 punitive damages in addition to reasonable attorney's fees and
3 costs of the action.

4 (d) The remedies or penalties provided by this section are
5 cumulative and in addition to any other remedies or penalties
6 allowed by law."

7 SECTION 2. Chapter 708, Hawaii Revised Statutes, is
8 amended by adding a new section to part I to be appropriately
9 designated and to read as follows:

10 "§708- Financial exploitation of an elderly person or
11 disabled adult; presumption of exploitation; penalties. (1) A
12 person commits the offense of financial exploitation of an
13 elderly person or disabled adult if the person:

14 (a) Knowingly obtains, uses, or endeavors to obtain or use
15 an elderly person's or disabled adult's funds, assets,
16 or property with the intent to temporarily or
17 permanently deprive the elderly person or disabled
18 adult of the use, benefit, or possession of the funds,
19 assets, or property, or to benefit someone other than
20 the elderly person or disabled adult, by a person who:



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- 1 (i) Stands in a position of trust and confidence with
- 2 the elderly person or disabled adult; or
- 3 (ii) Has a business relationship with the elderly
- 4 person or disabled adult;
- 5 (b) Obtains or uses, endeavors to obtain or use, or
- 6 conspires with another to obtain or use an elderly
- 7 person's or disabled adult's funds, assets, or
- 8 property with the intent to temporarily or permanently
- 9 deprive the elderly person or disabled adult of the
- 10 use, benefit, or possession of the funds, assets, or
- 11 property, or to benefit someone other than the elderly
- 12 person or disabled adult, by a person who knows or
- 13 reasonably should know that the elderly person or
- 14 disabled adult lacks the capacity to consent;
- 15 (c) Breaches a fiduciary duty owed to an elderly person or
- 16 disabled adult as the guardian of the person or
- 17 property of the elderly person or disabled adult, or
- 18 trustee of a trust created or established in favor of
- 19 the elderly person or disabled adult or agent under a
- 20 power of attorney which results in an unauthorized
- 21 appropriation, sale, or transfer of property of the



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1 elderly person or disabled adult or held in trust for
2 the benefit of the elderly person or disabled adult.

3 An unauthorized appropriation under this section
4 occurs when the elderly person or disabled adult does
5 not receive the reasonably equivalent financial value
6 for goods or services, or when the fiduciary commits
7 any of the following acts:

8 (i) For agents, and guardians, appointed under
9 chapter 560:

10 (A) Commits fraud in obtaining appointment;

11 (B) Abuses powers;

12 (C) Wastes, embezzles, or intentionally
13 mismanages the assets of the principal or
14 beneficiary; or

15 (D) Acts contrary to the principal's sole
16 benefit or best interest; or

17 (ii) For guardians and trustees who are appointed
18 under chapter 551 or 554:

19 (A) Commits fraud in obtaining appointment;

20 (B) Abuses powers; or



- 1 (C) Wastes, embezzles, or intentionally
- 2 mismanages the assets of the principal or
- 3 beneficiary;
- 4 (d) Misappropriates, misuses, or transfers without
- 5 authorization money belonging to an elderly person or
- 6 disabled adult from an account in which the elderly
- 7 person or disabled adult placed the funds, owned the
- 8 funds, and was the sole contributor or payee of the
- 9 funds before the misappropriation, misuse, or
- 10 unauthorized transfer; provided that this paragraph
- 11 applies only to the following accounts:
- 12 (i) Personal accounts;
- 13 (ii) Joint accounts created with the intent that only
- 14 the elderly person or disabled adult enjoys all
- 15 rights, interests, and claims to moneys deposited
- 16 into the account; or
- 17 (iii) Convenience accounts; or
- 18 (e) Intentionally or negligently fails to effectively use
- 19 an elderly person's or disabled adult's income and
- 20 assets for the necessities required for that person's
- 21 support and maintenance, and the person is a caregiver



1 or stands in a position of trust and confidence with
2 the elderly person or disabled adult.

3 (2) Any inter vivos transfer of money or property valued
4 in excess of \$10,000 at the time of the transfer, whether in a
5 single transaction or multiple transactions, by a person sixty-
6 five years of age or older to a nonrelative whom the transferor
7 knew for fewer than two years before the first transfer and for
8 which the transferor did not receive the reasonable equivalent
9 financial value in goods or services creates a rebuttable
10 presumption that the transfer was the result of exploitation;
11 provided that:

12 (a) The presumption in this subsection shall apply
13 regardless of whether the transfer or transfers are
14 denoted by the parties as a gift or loan; provided
15 that it shall not apply to a valid loan evidenced in
16 writing that includes definite repayment dates and
17 repayment is not in default, in whole or in part, for
18 more than sixty-five days;

19 (b) The presumption in this subsection does not apply to:

20 (i) Persons who are in the business of making loans;

21 or



1 (ii) Bona fide charitable donations to nonprofit
2 organizations that qualify for tax exempt status
3 under the Internal Revenue Code; and
4 (c) In a criminal case to which this subsection applies,
5 if the trial is by jury, jurors shall be instructed
6 that they may, but are not limited to draw an
7 inference of exploitation upon proof beyond a
8 reasonable doubt of the facts listed in this
9 subsection. The presumption of shall impose no burden
10 on the defendant.
11 (3) Financial exploitation of an elderly person or
12 disabled adult in the first degree is a class A felony if the
13 funds, assets, or property involved in the exploitation of the
14 elderly person or disabled adult is valued at \$50,000 or more.
15 (4) Financial exploitation of an elderly person or
16 disabled adult in the second degree is a class B felony if the
17 funds, assets, or property involved in the exploitation of an
18 elderly person or disabled adult is valued \$10,000 or more, but
19 less than \$50,000.
20 (5) Financial exploitation of an elderly person or
21 disabled adult in the third degree is a class C felony if the



1 funds, assets, or property involved in the exploitation of an
2 elderly person or disabled adult is valued at less than \$10,000.

3 (6) If a person is charged with financial exploitation of
4 an elderly person or disabled adult that involves the taking or
5 loss of property valued at more than \$5,000 and property
6 belonging to a victim is seized from the defendant pursuant to a
7 search warrant, the court shall hold an evidentiary hearing and
8 determine, by a preponderance of the evidence, whether the
9 defendant unlawfully obtained the victim's property. If the
10 court finds that the property was unlawfully obtained, the court
11 may order it returned to the victim for restitution purposes
12 before a trial on the charge. This determination is
13 inadmissible in evidence at trial on the charge and does not
14 give rise to a presumption that the defendant has committed an
15 offence under this section."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 4. New statutory material is underscored.

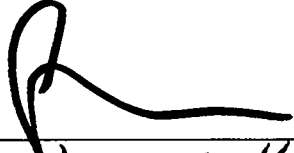
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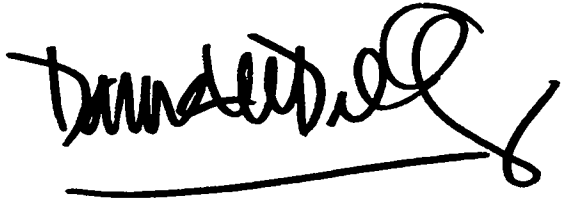


1 SECTION 5. This Act shall take effect upon its approval.

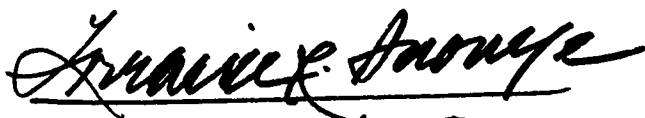
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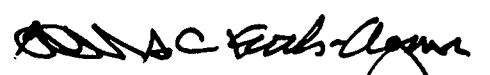
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S.B. NO. 2949

Report Title:

Kupuna Caucus; Elderly; Vulnerable Adults; Disabled Adults;
Financial Exploitation; Civil Action; Damages; Attorneys Fees;
Penal Code; Presumption

Description:

Authorizes a civil cause of action by a vulnerable adult for financial exploitation of a vulnerable adult. Allows attorney's fees and costs and punitive damages. Establishes degrees and classes of felonies for financial exploitation of an elderly person or disabled adult. Establishes a presumption of financial exploitation.

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