

H.B. NO. 867

A BILL FOR AN ACT

RELATING TO THE MANDATORY REPORTING OF FINANCIAL ABUSE OF ELDERS
BY FINANCIAL INSTITUTIONS.

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 if:]~~ the appropriate county 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:

- 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.~~

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

1 practicably possible, and by written report sent within two
2 business days, to the appropriate county police department.

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

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

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

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

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

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

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

20 "Financial abuse" means financial ~~[abuse or economic]~~
21 ~~exploitation.]~~ to take, appropriate, obtain, or retain, or
22 assist in taking, appropriating, obtaining, or retaining, real
23 or personal property of an elder adult by any means, including

1 undue influence, for a wrongful purpose or with intent to
2 defraud the elder adult."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6
7
8
9

INTRODUCED BY:  _____
BY REQUEST

JAN 22 2013

H.B. NO. 867

Report Title:

Financial Abuse; Elder; Notification

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 THE MANDATORY REPORTING OF FINANCIAL ABUSE OF ELDERS BY FINANCIAL INSTITUTIONS.

PURPOSE: To require 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 reporting to 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 detect financial abuse through their observation of behavior or activity relating to financial transactions involving elders.

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 has the expertise to investigate reports of abuse of a vulnerable adult that have been reported by health and social services personnel as required by section 346-224, Hawaii Revised Statutes. Prior to the enactment of section 412:3-114.5, the Department was able to properly attend to reports of physical, psychological, and sexual abuse, caregiver neglect, self-neglect, and financial exploitation that generally involved a caregiver's misuse of funds intended for the support of the vulnerable adult.

Since the enactment of section 412:3-114.5 in 2007, the Department experienced a substantial increase in the number of financial abuse reports from financial institutions. In fiscal year 2007-2008, the Department received and investigated 18 reports from financial institutions. In fiscal year 2011-2012, the Department received and investigated 102 reports from financial institutions, an increase of 466 percent.

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. 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 the individuals committing financial 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 and prosecute 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. This represents 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 responsibility to respond to reports of physical, psychological, and sexual abuse, caregiver neglect, and self-neglect of vulnerable adults, as well as financial exploitation of vulnerable adults, as reported pursuant to section 346-224, Hawaii Revised Statutes.

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

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 601

OTHER AFFECTED AGENCIES: County police departments, County prosecutors and Department of Commerce and Consumer Affairs, Financial Institution Division

EFFECTIVE DATE: Upon approval.