

**COMMITTEE ON HEALTH, HOSPITALS AND
HUMAN SERVICES**

**06/26/2020-AMENDED AND REPORTED OUT TO THE FLOOR
12/02/2019-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY**

BILL NO. 33-0077

Thirty-Third Legislature of the Virgin Islands

May 14, 2019

An Act amending title 34, chapter 15 of the Virgin Islands Code relating to the prevention of abuse of elderly persons and dependent adults to prohibit the financial exploitation of elderly persons or dependent adults

PROPOSED BY: Senators Allison L. DeGazon, Marvin A. Blyden,
Myron D. Jackson, Javan E. James, Sr., Stedmann Hodge, Jr.,
Athneil “Bobby” Thomas and Steven D. Payne, Sr.
Co-sponsors: Oakland Benta and Alicia V. Barnes

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 34 Virgin Islands Code, chapter 15 is amended in the following instances:

(a) Section 452 is amended:

(1) In subsection (c), paragraph (1) by inserting “financial” before “exploitation”;

(2) Striking all the language in subsection (l);

(3) Striking the language in subsection (m) and inserting the following language:

“Financial abuse” has the meaning set forth in section 470.”

(4) Inserting two appropriately designated subsections that read as follows:

“() Financial exploitation” has the meaning set forth in section 470a.

() “Person in a position of trust and confidence” means a person who:

(1) is a parent, spouse, adult child or other relative by blood or marriage of the elderly person or dependent adult;

(2) is a joint tenant or tenant in common with the elderly person or dependent adult;

(3) has a legal or fiduciary relationship with the elderly person or dependent adult;

(4) is a financial planning or investment professional for the elderly person or dependent adult; or

(5) is a paid or unpaid caregiver or caretaker for the elderly person or dependent adult.”

(5) Subsection (t) is amended by:

(A) inserting “all officers and employees of financial institutions who have direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult’s financial documents, records, or transactions, in connection with providing financial services,” after “clergy member,”; and

(B) inserting “or other government agencies” after “local law enforcement agency”.

(6) Striking subsections (n), (p), and (z), and re-designating the affected subsections accordingly.

(b) Section 453, subsection (a) is amended by inserting “, financial exploitation,” after both occurrences of “financial abuse”.

(c) Section 460, subsection (a), paragraph (vi) is amended by inserting “financial” before “exploitation”.

(d) Section 464, subsection (b), paragraph (2) is amended by inserting “financial exploitation,” after “isolation”.

(e) Section 468. [Reserved] is amended to read as follows:

“§468. Investigations and provision of adult protective services.

(a) Pursuant to its responsibilities with respect to investigations of reports of suspected or known abuse and neglect of elders and dependent adults, the Department of Human Services may seek and receive local law enforcement assistance with investigations of financial exploitation to elders or dependent adults.

(b) The Department of Human Services during its investigation of suspected or known financial exploitation may:

(1) visit the residence of the elder or dependent adult who is the subject of the report to conduct interviews and collect information relevant to the investigation;

(2) conduct interviews and consultations with banks, other financial institutions, other governmental agencies that provide financial or medical assistance, other private and non-profit service agencies, and individuals who have knowledge of the elder or dependent adult; and

(3) obtain financial records and other information from the entities and individuals listed in paragraph (2);

(c) If any person denies or obstructs access to the residence, banks, or other financial institutions to the Department of Human Services worker who is conducting the investigation or obstructs the provision of adult protective services, the Department may petition the Superior Court requesting an order that enjoins the person from so obstructing the investigation or the provision of adult protective services.

(d) The Department of Human Services may provide or arrange for adult protective services that may be necessary to assist and protect elders and dependent adults during an investigation of suspected or known financial exploitation in accordance with the established

1 service plan. Adult protective services may include but is not limited to homemaker service, home-
2 health aide, transportation, referrals to legal assistance, counseling, and nutrition services.

3 (f) Section 469 is amended as follows:

4 (1) Subsection (a) is amended by:

5 (A) Inserting the following language at the beginning of the subsection:

6 “It is unlawful for any person to abuse an elder or dependent adult.”;

7 (B) Striking “being a caregiver”;

8 (C) Striking “felony”; and

9 (D) Striking “person punishable by a term of imprisonment of not less
10 than one year nor more than three years, who and” and inserting “when that
11 person”.

12 (2) Subsection (b) is amended by:

13 (A) Striking “being a caregiver” and inserting “in a position of trust and
14 confidence” and striking “felony”.

15 (B) Designating the existing language as paragraph (2) and adding a
16 paragraph (1) that reads as follows:

17 “(1) Any person who abuses an elderly person or a dependent adult as set
18 forth in subsection (a) is guilty of criminal abuse of an elder or dependent adult and
19 is guilty of a felony punishable by a term of imprisonment of not less than one year
20 and not more than three years.”

21 (g) Section 470, subsection (a) is amended by striking “Financial abuse of an elder or
22 dependent adult as set forth in section 452(m) of this chapter occurs” and inserting “A person
23 commits financial abuse of an elderly person or dependent adult”.

24 (h) Sections 470a. through 470c are added and read as follows:

“§470a. Financial exploitation of an elderly person or dependent adult.

(a) A person commits the offense of financial exploitation of an elderly person or a dependent adult when the person knowingly and by deception or intimidation obtains control over the property of an elderly person or a dependent adult or illegally uses the assets or resources of an elderly person or a dependent adult.

(b) The illegal use of the assets or resources of an elderly person or a dependent adult includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, or use of the assets or resources contrary to law.

(c) Definitions. For purposes of this section:

(1) "Intimidation" means the communication to an elderly person or dependent adult that he will be deprived of food and nutrition, shelter, prescribed medication or medical care and treatment or conduct that causes fear of such loss.

(2) "Deception" means a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly person or dependent adult or to the existing or pre-existing condition of any of the property involved in such contract or agreement; or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit the elderly person or dependent adult to enter into a contract or agreement.

§470b. Violations, criminal penalties.

(a) It is unlawful for any person to financially exploit an elderly person or a dependent adult.

(b) Any person who financially exploits an elderly person or a dependent adult is guilty of:

(1) a misdemeanor if the value of the property is less than \$500 punishable by imprisonment for not more than one year or by payment of a fine of not more than \$1,000, or both;

(2) a felony if the value of the property is \$500 or more punishable by imprisonment for not more than ten years or by payment of a fine of not more than \$10,000, or both;

(c) If a person who stands in a position of trust and confidence with the elderly person or dependent adult commits the crime of financial exploitation, that person is guilty of:

(1) a misdemeanor, if the value of the property is less than \$100, punishable by imprisonment for not more than one year or by payment of a fine of not more than \$1,000, or both; or

(2) a felony if the value of the property is \$100 or more, punishable by imprisonment for not more than 15 years or by payment of a fine of not more than \$15,000, or both.

(d) Any person convicted of the financial exploitation of an elderly person or a dependent adult shall pay restitution.

§470c. Civil liability.

(a) A civil cause of action exists for financial exploitation of an elderly person or a dependent adult. A person against whom a civil judgment has been entered for financial exploitation of an elderly person or dependent adult is liable for treble damages to the victim or to the estate of the victim, plus reasonable attorney fees and court costs.

(b) This section is operative regardless of whether or the defendant has been charged or convicted of the criminal offense as described in section 470b. This section does not limit or affect the right of any person to bring any cause of action or seek any remedy available under the common law, or other applicable law, arising out of the financial exploitation of an elderly person or a dependent adult.

(c) If a person who stands in a position of trust and confidence is charged with financial exploitation of an elderly person or a dependent adult that involves the taking or loss of property valued at more than \$5,000, the Attorney General may file a petition with the Superior Court, when the defendant has been charged, to freeze the assets of the defendant in an amount equal to, but not greater than, the alleged value of lost or stolen property in the defendant's pending criminal proceeding, for purposes of restitution to the victim. The burden of proof required to freeze the defendant's assets is a preponderance of the evidence.”

(i) Section 472 is amended by striking both occurrences of “clear and convincing evidence” and inserting “a preponderance of the evidence”.

(j) Section 473. [Reserved is amended to read as follows]:

“§473. Good Faith Efforts.

(a) Nothing in this chapter may construed to impose criminal liability on a person who has made a good faith effort to assist the elderly person or dependent adult in the management of elderly person or depend adult’s property but, through no fault of the no fault of the assisting person, the assisting person has been unable to provide such assistance. Proof of stated good faith efforts must be properly documented.

(b) For purposes of this section, good faith effort means the honest intent to act without taking an unfair advantage over an elderly person or dependent adult, or to fulfill a promise to act, even when some legal technicality is not fulfilled.”

(k) Sections 478 and 479 are added and read as follows:

“§478. Defense not available.

It is no defense that a person who violated this chapter reasonably believed that the victim was not an elderly person or dependent adult.

§479. Limitations.

Nothing in this chapter may be construed to limit the remedies available to the victim under title 16, chapter 2 of the Virgin Islands Code.”

BILL SUMMARY

The bill amends title 34 Virgin Islands Code, chapter 15, relating to the financial exploitation of elderly persons or dependent adults, and makes technical amendments. Section 452 is amended by defining “person in position of trust and confidence”, by defining “financial exploitation”, and by expanding the definition of “mandated reporter”. A new section 468 is added relating to investigations by the Department of Human Services of reports of suspected or known abuse and financial exploitation of elders or dependent adults and the provision of adult protective services.

Section 469 is amended to expand the group of persons, from caregiver to any person, that a cause of action for criminal abuse or neglect of an elder person or dependent adult can be brought against, and to expand the group of persons, from caregiver to any person in a position of trust and confidence, that an enhanced penalty for criminal abuse or neglect of an elder person or dependent adult applies to. Section 470a. is added to define financial exploitation of an elderly per or dependent adult and outlines the requisite *mens rea*.

Section 470bis added to establish the criminal penalties for financial exploitation with enhanced penalties against any person in a position of trust and confidence. Section 470c. is added to establish a civil cause of action for financial exploitation. Section 472 is amended to lower the burden of proof, from clear and convincing evidence to preponderance of the evidence, in a civil action for physical abuse, neglect, or financial abuse.

Section 473 is added to establish a good faith effort defense to criminal liability. Section 478 was added to establish that the accused cannot use the defense of a reasonable belief that the victim was not an elderly person or person with a disability. Section 479 was added to clarify that remedies under title 16, chapter 2, remain available to a victim.

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