

COMMITTEE ON HEALTH, HOSPITALS
AND HUMAN SERVICES

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 by deleting section 470 and amending title 34 by adding a new chapter 15A relating to the financial exploitation of elderly persons or dependent adults

PROPOSED BY: Senators Allison L. DeGazon and Javan E. James, Sr.

Be it enacted by the Legislature of the Virgin Islands:

1 **SECTION 1.** Title 34, Virgin Islands Code, chapter 15, is amended by deleting section
2 470.
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4 **SECTION 2.** Title 34 of the Virgin Islands Code is amended by adding a new chapter
5 15A to read as follows:

6 **“Chapter 15A. Financial exploitation of elderly persons or dependent adults**

7 **§ 481. Definitions.**

8 As used in this chapter, the following words, unless the context clearly requires
9 otherwise, have the following meanings:

10 (1) "Elderly person" means a person 60 years of age or older.

11 (2) "Dependent Adult" means a person who suffers from a physical or mental
12 impairment resulting from disease, injury, functional disorder or congenital condition that

1 impairs the individual's mental or physical ability to independently manage his or her property
2 or financial resources, or both.

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

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

12 (5) "Person in a position of trust and confidence" means a person who:

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

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

17 (C) has a legal or fiduciary relationship with the elderly person or dependent
18 adult;

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

21 (E) is a paid or unpaid caregiver for the elderly person or dependent adult.

22 **§ 482. Financial Exploitation**

23 (a) A person commits financial exploitation of an elderly person or a dependent adult
24 when he or she stands in a position of trust or confidence with the elderly person or dependent
25 adult and he or she knowingly and by deception or intimidation obtains control over the
26 property of an elderly person or a dependent adult or illegally uses the assets or resources of an
27 elderly person or a dependent adult.

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

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1 **§483. Punishment.**

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

4 (1) a misdemeanor if the value of the property is less than \$500; or

5 (2) a felony if the value of the property is \$500 or more.

6 (b) Any person convicted of the financial exploitation of an elderly person or a
7 dependent adult shall be required to pay restitution.

8 **§484. Limitations.**

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

11 **§485. Good faith efforts.**

12 Nothing in this chapter shall be construed to impose criminal liability on a person who
13 has made a good faith effort to assist the elderly person or dependent adult in the management
14 of his or her property but, through no fault of his or her own, has been unable to provide such
15 assistance.

16 **§486. Not a defense.**

17 It shall not be a defense to financial exploitation of an elderly person or dependent adult
18 that the accused reasonably believed that the victim was not an elderly person or dependent
19 adult.

20 **§487. Civil Liability.**

21 (a) A civil cause of action exists for financial exploitation of an elderly person or a
22 dependent adult as described in section 482 of this Chapter. A person against whom a civil
23 judgment has been entered for financial exploitation of an elderly person or dependent adult
24 shall be liable for treble damages to the victim or to the estate of the victim, plus reasonable
25 attorney fees and court costs. In a civil action under this section, the burden of proof that the
26 defendant committed financial exploitation of an elderly person or a dependent adult, as
27 described in section 482 of this chapter, shall be a preponderance of the evidence.

28 (b) This section shall be operative whether the defendant has been charged or
29 convicted of the criminal offense as described in section 482 of this Chapter. This section shall
30 not limit or affect the right of any person to bring any cause of action or seek any remedy
31 available under the common law, or other applicable law, arising out of the financial
32 exploitation of an elderly person or a dependent adult.

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

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Bill Summary

9 This Bill amends title 34 of the Virgin Islands Code by adding a new chapter 15A
10 relating to the financial exploitation of elderly persons or dependent adults. The new chapter is
11 divided into seven sections. Section 481 contains definitions of terms used throughout the new
12 Chapter. Section 482 clarifies the scope of the chapter and outlines the requisite *mens rea*.
13 Section 483 establishes punishment for violations of the chapter. Section 484 specifies that the
14 chapter does not abridge the victim's rights pursuant to title 16, chapter 2 of the Virgin Islands
15 Code. Section 485 establishes a good faith effort defense to criminal liability. Section 486
16 establishes that the accused cannot use the defense of a reasonable belief that the victim was
17 not an elderly person or person with a disability. Section 487 contains general provisions
18 relating to civil action that can be taken by victims under this chapter.

19 **BR19-0223/April 4, 2019/LMW/Reviewed by EEM**