UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

November 25, 2019

35GL-19-1256
Speaker Tina Rose Muña Barnes

NOV 25 2019
Time 4:06 ( )AM (/)PM
Received By: Alon

HONORABLE TINA ROSE MUÑA BARNES
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96932

2019 NOV 25 PM 4:32

Re: Substitute Bill No. 13-35 (COR) – An Act to *Add* a New Chapter 32 to Title 9 of Guam Code Annotated, Relative to Protecting Elderly Persons and Disabled Adults from Financial Exploitation by Providing Criminal Punishment for Those Who Harm Our *Manåmko'* and Individuals with Disabilities

Dear Madame Speaker:

Substitute Bill 13-35, which shall be known as the "*Respetu I Manåmko'* Act," safeguards the most vulnerable in our community from financial exploitation and abuse. While we, as a community, understand our responsibility to protect the elderly and disabled among us, I recognize that laws help to remind us of our obligations and strengthen our resolve to do right.

This important piece of legislation fills a gap in our criminal law -- it defines the crime of financial exploitation of an elderly person or individual with a disability, establishes a permissive presumption for the trier of fact, and sets the punishment for those convicted of such crime. Importantly, it also provides a mechanism for returning stolen property to the victim quickly, even before a final adjudication in the criminal case. This pre-trial proceeding will help victims return to a sense of normalcy so that the effects of the crime are less profound. I thank Senator Amanda Shelton and her colleagues in the Legislature for their work toward protecting

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this segment of our community and I gladly join their efforts by signing Substitute Bill 13-35 into law as ***Public Law No. 35-50***.

Senseremente,

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Enclosure(s): Substitute Bill No. 13-35 (COR) *nka Public Law 35-50*

cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

2019-7417
RCVD AT CENTRAL FILES
NOV 18 '19 PM6:05
Jessica Cruz

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 13-35 (COR), "AN ACT TO *ADD* A NEW CHAPTER 32 TO TITLE 9 OF GUAM CODE ANNOTATED, RELATIVE TO PROTECTING ELDERLY PERSONS AND DISABLED ADULTS FROM FINANCIAL EXPLOITATION BY PROVIDING CRIMINAL PUNISHMENT FOR THOSE WHO HARM OUR *MANÅMKO'* AND INDIVIDUALS WITH DISABILITIES,"** was on the 18th day of November 2019, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 18th day of Nov., 2019, at 6:04 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 11/25/2019

Public Law No. 35-50

2019-7417
RCVD AT CENTRAL FILE
NOV 18 '19 PM6:05
Jessica Cruz

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 13-35 (COR)
As amended by the Committee on Higher Education and the Advancement of Women, Youth and Senior Citizens; and substituted and further amended on the Floor.

Introduced by:

Amanda L. Shelton
Therese M. Terlaje
Tina Rose Muña Barnes
Régine Biscoe Lee
Jose "Pedo" Terlaje
Telena Cruz Nelson
Joe S. San Agustin
Telo T. Taitague
Kelly Marsh (Taitano), PhD
William M. Castro
James C. Moylan
Louise B. Muña
Sabina Flores Perez
Clynton E. Ridgell
Mary Camacho Torres

AN ACT TO *ADD* A NEW CHAPTER 32 TO TITLE 9 OF GUAM CODE ANNOTATED, RELATIVE TO PROTECTING ELDERLY PERSONS AND DISABLED ADULTS FROM FINANCIAL EXPLOITATION BY PROVIDING CRIMINAL PUNISHMENT FOR THOSE WHO HARM OUR *MANÅMKO'* AND INDIVIDUALS WITH DISABILITIES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act *shall* be cited as the *"Respetu I Manåmko' Act."*

Section 2. Financial Exploitation of the Elderly and Individuals with Disabilities. A new Chapter 32 is hereby *added* to Title 9 of Guam Code Annotated, to read:

"CHAPTER 32

FINANCIAL EXPLOITATION OF THE ELDERLY AND INDIVIDUALS WITH DISABILITIES

§ 32.10. General Definitions.
§ 32.20. Financial Exploitation of an Elderly Person or Individual with a Disability: Defined.
§ 32.30. Permissive Presumption of Exploitation.
§ 32.40. Financial Exploitation of an Elderly Person or Individual with a Disability: Punished.
§ 32.50. Evidentiary Hearing Required for Custody of Property Determination.

§ 32.10. General Definitions.

As used in this Chapter:

(a) *Business relationship* means a relationship between two (2) or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

(b) *Caregiver* means a person who has been entrusted with and has assumed responsibility for the care or the property of an elderly person or individual with a disability.

(c) *Individual with a disability* means a person eighteen (18) years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or

mental illness, or who has one (1) or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

(d) *Elderly person* means a person fifty-five (55) years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

(e) *Endeavor* means to attempt or try.

(f) *Lacks capacity to consent* means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or individual with a disability to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or individual with a disability's person or property.

(g) *Obtains* or *uses* means any manner of:

(1) taking or exercising control over property; or

(2) making any use, disposition, or transfer of property.

(h) *Position of trust and confidence* with respect to an elderly person or an individual with a disability means the position of a person who:

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

(2) is a joint tenant or tenant in common with the elderly person or individual with a disability;

(3) has a legal or fiduciary relationship with the elderly person or individual with a disability, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

(4) is a caregiver of the elderly person or individual with a disability; or

(5) is any other person who has been entrusted with and has assumed responsibility for the use or management of the elderly person's or individual with a disability's funds, assets, or property.

(i) *Property* means anything of value and includes:

(1) real property, including things growing on, affixed to, and found in land;

(2) tangible or intangible personal property, including money, rights, privileges, interests, and claims; and

(3) services.

(j) *Services* means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

(1) repairs or improvements to property;

(2) professional services;

(3) private, public, or governmental communication, transportation, power, water, or sanitation services;

(4) lodging accommodations; and

(5) admissions to places of exhibition or entertainment.

§ 32.20. Financial Exploitation of an Elderly Person or Individual with a Disability: Defined.

A person is guilty of financial exploitation of an elderly person or individual with a disability if he or she:

(a) knowingly obtains or uses, or endeavors to obtain or use, an elderly person's or individual with a disability's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or

individual with a disability of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or individual with a disability, by a person who:

(1) stands in a position of trust and confidence with the elderly person or individual with a disability; or

(2) has a business relationship with the elderly person or individual with a disability;

(b) obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or individual with a disability's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or individual with a disability of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or individual with a disability, by a person who knows or reasonably should know that the elderly person or individual with a disability lacks the capacity to consent;

(c) is a guardian, a trustee who is an individual, or an agent under a power of attorney who breaches a fiduciary duty to the elderly person or individual with a disability which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation, sale, or transfer of property, under this Subsection occurs when the elderly person or individual with a disability does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

(1) for appointed agents:

(A) committing fraud in obtaining their appointments;

(B) abusing their powers;

(C) embezzling or intentionally mismanaging the assets of the principal or beneficiary; or

(D) acting contrary to the principal's sole benefit or best interest;

(2) for guardians and trustees:

(A) committing fraud in obtaining their appointments;

(B) abusing their powers; or

(C) embezzling or intentionally mismanaging the assets of the principal or beneficiary;

(d) misappropriates, misuses, or transfers without authorization, money belonging to an elderly person or individual with a disability from an account in which the elderly person or individual with a disability placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer occurred. This Subsection only applies to the following types of accounts:

(1) personal accounts;

(2) joint accounts created with the intent that only the elderly person or individual with a disability enjoys all rights, interests, and claims to moneys deposited into such account; or

(3) convenience accounts;

(e) is a caregiver or a person who stands in a position of trust and confidence with the elderly person or individual with a disability who intentionally or negligently fails to effectively use an elderly person's or individual with a disability's income and assets for the necessities required for that person's support and maintenance.

§ 32.30. Permissive Presumption of Exploitation.

Any inter vivos transfer of money or property valued in excess of Ten Thousand Dollars ($10,000) at the time of the transfer, whether in a single transaction or multiple transactions, by a person fifty-five (55) years of age or older to a nonrelative whom the transferor knew for fewer than two (2) years before the first (1st) transfer and for which the transferor did not receive the reasonably equivalent financial value in goods or services creates a permissive presumption that the transfer was the result of exploitation.

(a) This Section applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan, except that it does not apply to a valid loan evidenced in writing that includes definite repayment dates. However, if repayment of any such loan is in default, in whole or in part, for more than sixty-five (65) days, the presumption of this Section applies.

(b) This Section does not apply to:

(1) persons who are in the business of making loans; and

(2) bona fide charitable donations to nonprofit organizations that qualify for tax exempt status.

(c) In a criminal case to which this Section applies, if the trial is by jury, jurors *shall* be instructed that they may, but are not required to, draw an inference of exploitation upon proof beyond a reasonable doubt of the facts listed in this Section. The presumption of this Section imposes no burden of proof on the defendant.

§ 32.40. Financial Exploitation of an Elderly Person or Individuals with a Disability: Punished.

(a) If the funds, assets, or property involved in the exploitation of an elderly person or individual with a disability is valued at Fifty Thousand Dollars ($50,000) or more, the offender commits a felony of the first (1st) degree.

(b) If the funds, assets, or property involved in the exploitation of an elderly person or individual with a disability is valued at Ten Thousand Dollars ($10,000) or more, but less than Fifty Thousand Dollars ($50,000), the offender commits a felony of the second (2nd) degree.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or individual with a disability is valued at less than Ten Thousand Dollars ($10,000), the offender commits a felony of the third (3rd) degree.

(d) It does not constitute a defense to a prosecution for any violation of this Chapter that the accused did not know the age of the victim.

§ 32.50. Evidentiary Hearing Required for Custody of Property Determination.

If a person is charged with financial exploitation of an elderly person or individual with a disability that involves the taking of or loss of property valued at more than Five Thousand Dollars ($5,000) and property belonging to a victim is seized from the defendant pursuant to a search warrant, the court *shall* hold an evidentiary hearing and determine, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property.

If the court finds that the property was unlawfully obtained, the court may order it returned to the victim for restitution purposes before trial on the charge.

This determination is inadmissible in evidence at trial on the charge and does not give rise to any inference that the defendant has committed an offense under this Chapter."