

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
280-36 (COR)	Tina Rose Muña Barnes Amanda L. Shelton Jose "Pedro" Terlaje Clynton E. Ridgell Joe S. San Agustin Mary Camacho Torres	AN ACT TO <i>ADD</i> A NEW CHAPTER 54 TO TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING AN ORDER OF PROTECTION FROM FINANCIAL EXPLOITATION OF THE ELDERLY AND INDIVIDUALS WITH A DISABILITY.	3/17/22 10:40 a.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÁHAN
2022 (SECOND) Regular Session

Bill No. 280-36 (COR)

Introduced by:

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**AN ACT TO *ADD* A NEW CHAPTER 54 TO TITLE 7 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING AN ORDER OF PROTECTION FROM
FINANCIAL EXPLOITATION OF THE ELDERLY AND
INDIVIDUALS WITH A DISABILITY.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 54 is hereby *added* to Title 7 of the Guam Code
Annotated, to read as follows:

"Chapter 54

PROTECTION FROM FINANCIAL EXPLOITATION

§ 54101. Definitions.

§ 54102. Jurisdiction.

§ 54103. Commencement of Proceedings.

§ 54104. Hearing.

§ 54105. Relief.

§ 54106. Notification.

§ 54107. Emergency Relief.

§ 54108. Procedure.

1 § 54109. Contempt.

2
3 **§ 54101. Definitions**

4 As used in this chapter, the term:

5 (a) Financial exploitation occurs when a person:

6 (1) knowingly obtains or uses, or endeavors to obtain or use, an
7 elderly person's or individual with a disability's funds, assets, or property
8 with the intent to temporarily or permanently deprive the elderly person or
9 individual with a disability of the use, benefit, or possession of the funds,
10 assets, or property, or to benefit someone other than the elderly person or
11 individual with a disability, by a person who:

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

14 (B) has a business relationship with the elderly person or
15 individual with a disability;

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

24 (3) is a guardian, a trustee who is an individual, or an agent under a
25 power of attorney who breaches a fiduciary duty to the elderly person or
26 individual with a disability which results in an unauthorized appropriation,
27 sale, or transfer of property. An unauthorized appropriation, sale, or transfer

1 of property, under this Subsection occurs when the elderly person or
2 individual with a disability does not receive the reasonably equivalent
3 financial value in goods or services, or when the fiduciary violates any of
4 these duties:

5 (A) for appointed agents:

6 (i) committing fraud in obtaining their appointments;

7 (ii) abusing their powers;

8 (iii) embezzling or intentionally mismanaging the assets
9 of the principal or beneficiary; or

10 (iv) acting contrary to the principal's sole benefit or best
11 interest;

12 (B) for guardians and trustees:

13 (i) committing fraud in obtaining their appointments;

14 (ii) abusing their powers; or

15 (iii) embezzling or intentionally mismanaging the assets
16 of the principal or beneficiary;

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

23 (A) personal accounts;

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

27 (C) convenience accounts;

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

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

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

12 (d) Individual with a disability means a person eighteen (18) years of age or
13 older who suffers from a condition of physical or mental incapacitation due to a
14 developmental disability, organic brain damage, or mental illness, or who has one
15 (1) or more physical or mental limitations that restrict the person's ability to
16 perform the normal activities of daily living.

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

22 (f) Endeavor means to attempt or try.

23 (g) Lacks capacity to consent means an impairment by reason of mental
24 illness, developmental disability, organic brain disorder, physical illness or
25 disability, chronic use of drugs, chronic intoxication, short-term memory loss, or
26 other cause, that causes an elderly person or individual with a disability to lack

1 sufficient understanding or capacity to make or communicate reasonable decisions
2 concerning the elderly person's or individual with a disability's person or property.

3 (h) Obtains or uses means any manner of:

4 (1) taking or exercising control over property; or

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

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

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

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

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

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

16 or

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

20 (j) Property means anything of value and includes:

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

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

25 (3) services.

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

4 (1) repairs or improvements to property;

5 (2) professional services;

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

8 (4) lodging accommodations; and

9 (5) admissions to places of exhibition or entertainment.

10 **§ 54102. Jurisdiction.**

11 The Superior Court shall have jurisdiction over all proceedings under this
12 Chapter. The plaintiff's right to relief under this Chapter shall not be affected by
13 his or her leaving the residence or household to avoid further financial exploitation.

14 **§ 54103. Commencement of Proceedings.**

15 A person may seek relief under this Chapter for himself or herself or on
16 behalf of an elderly person or individual with a disability if he has personal
17 knowledge that such elderly person or individual with a disability has been
18 financially exploited or any parent or adult household member may seek relief
19 under this Chapter on behalf of an elderly person or individual with a disability by
20 filing a petition with the court alleging abuse by the defendant.

21 **§ 54104. Hearing.**

22 (a) Within 10 days of the filing of a petition under this Chapter, a hearing
23 shall be held at which the plaintiff must prove the allegation of financial
24 exploitation by a preponderance of the evidence. The court shall advise the
25 defendant of his right to be represented by counsel.

26 (b) The court may enter such temporary orders as it deems necessary to
27 protect the plaintiff from financial exploitation upon good cause shown in an ex

parte proceeding. Immediate and present danger of financial exploitation to the plaintiff constitute good cause for purposes of this section.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

§ 54105. Relief.

(a) The court shall be empowered to grant protection by appropriate order or approve any consent agreement to bring about a cessation of financial exploitation of the plaintiff or minor children, which are not limited to but may include:

(1) directing the defendant to refrain from financial exploiting the plaintiff;

(2) granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties;

(3) when the defendant has a duty to support the plaintiff living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant to restoring possession to the plaintiff or by consent agreement allowing the defendant to provide suitable, alternative housing; or

(4) enjoining the plaintiff from specified behavior that the court determines is necessary to effectuate orders described in § 54105(a)(1).

(b) Any protection order or approved consent agreement shall be for a fixed period of time as the court deems appropriate. The court may amend its order or agreement at any time upon subsequent petition or motion filed by either party.

(c) No order or agreement under this Chapter shall in any manner affect title to any real property.

1 **§ 54106. Notification.**

2 A copy of any order under this Chapter shall be issued to the plaintiff, the
3 defendant and the Guam Police Department with appropriate jurisdiction to
4 enforce the order or agreement.

5 **§ 54107. Emergency Relief.**

6 (a) When the court closes for regular proceedings during the weekend or a
7 holiday, a petition may be heard before the court in accordance with § 54105(a)(2)
8 or (3) if the court deems it necessary to protect the plaintiff from financial
9 exploitation upon good cause shown in an ex parte proceeding. Immediate and
10 present danger of abuse to the plaintiff shall constitute good cause for purposes of
11 this section.

12 (b) Any order issued under subsection (a) shall expire as of the resumption
13 of business of the court at the beginning of the week or within seventy-two (72)
14 hours, whichever occurs sooner, at which time the plaintiff may seek a temporary
15 order from the court.

16 (c) Any order issued under this section and documentation in support thereof
17 shall be immediately certified to the court. Such certification to the court shall have
18 the effect of commencing proceedings under § 54103 of this Chapter and invoking
19 the other provisions of this Chapter.

20 **§ 54108. Procedure.**

21 Any proceeding under this Chapter shall be in accordance with the Rules of
22 Civil Procedure and shall be in addition to any other available civil or criminal
23 remedies.

24 **§ 54109. Contempt.**

25 Upon violation of a protection order or a court approved consent agreement,
26 the Superior Court shall hold the defendant in contempt.

27 **Section 2. Effective Date.** This Act shall be effective upon enactment.