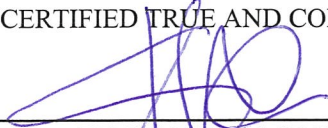


I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session
LEGISLATIVE SESSION VOTING RECORD

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.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building November 18, 2019					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator William M. CASTRO	✓					
Senator Régine Biscoe LEE	✓					
Senator Kelly G. MARSH (TAITANO), PhD	✓					
Senator James C. MOYLAN	✓					
Senator Louise B. MUÑA	✓					
Speaker Tina Rose MUÑA BARNES	✓					
Vice Speaker Telen Cruz NELSON					✓	✓
Senator Sabina Flores PEREZ	✓					
Senator Clynton E. RIDGELL	✓					
Senator Joe S. SAN AGUSTIN	✓					
Senator Amanda L. SHELTON	✓					
Senator Telo T. TAITAGUE	✓					
Senator Jose "Pedo" TERLAJE	✓					
Senator Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES					✓	✓

TOTAL:	13				2	2
	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused

CERTIFIED TRUE AND CORRECT:



 RENNAE V. C. MENO
 Clerk of the Legislature

I = Pass

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

**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.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Short Title.** This Act *shall* be cited as the “*Respetu I Manåmko'*
3 *Act.*”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (3) services.

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

13 (1) repairs or improvements to property;

14 (2) professional services;

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

17 (4) lodging accommodations; and

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

19 **§ 32.20. Financial Exploitation of an Elderly Person or Individual**
20 **with a Disability: Defined.**

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

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

1 assets, or property, or to benefit someone other than the elderly person or
2 individual with a disability, by a person who:

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

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

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

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

23 (1) for appointed agents:

24 (A) committing fraud in obtaining their appointments;

25 (B) abusing their powers;

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

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

3 (2) for guardians and trustees:

4 (A) committing fraud in obtaining their appointments;

5 (B) abusing their powers; or

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

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

14 (1) personal accounts;

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

18 (3) convenience accounts;

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

24 **§ 32.30. Permissive Presumption of Exploitation.**

25 Any inter vivos transfer of money or property valued in excess of Ten
26 Thousand Dollars (\$10,000) at the time of the transfer, whether in a single
27 transaction or multiple transactions, by a person fifty-five (55) years of age or older

1 to a nonrelative whom the transferor knew for fewer than two (2) years before the
2 first (1st) transfer and for which the transferor did not receive the reasonably
3 equivalent financial value in goods or services creates a permissive presumption that
4 the transfer was the result of exploitation.

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

11 (b) This Section does not apply to:

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

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

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

20 **§ 32.40. Financial Exploitation of an Elderly Person or Individuals**
21 **with a Disability: Punished.**

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

25 (b) If the funds, assets, or property involved in the exploitation of an elderly
26 person or individual with a disability is valued at Ten Thousand Dollars (\$10,000)

1 or more, but less than Fifty Thousand Dollars (\$50,000), the offender commits a
2 felony of the second (2nd) degree.

3 (c) If the funds, assets, or property involved in the exploitation of an elderly
4 person or individual with a disability is valued at less than Ten Thousand Dollars
5 (\$10,000), the offender commits a felony of the third (3rd) degree.

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

8 **§ 32.50. Evidentiary Hearing Required for Custody of Property**
9 **Determination.**

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

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

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