

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

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**PROPOSED BY:** Senators Allison L. DeGazon, Javan E. James, Sr. and  
Steven D. Payne, Sr.

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1 *Be it enacted by the Legislature of the Virgin Islands:*

2       **SECTION 1.** Title 34, Virgin Islands Code, chapter 15, is amended by deleting section 470.

3       **SECTION 2.** Title 34 of the Virgin Islands Code is amended by adding a new chapter 15A

4 to read as follows:

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

6       **§ 481. Definitions.**

7       As used in this chapter, the following words, unless the context clearly requires otherwise,

8 have the following meanings:

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

10       (2) "Dependent Adult" means a person who suffers from a physical or mental impairment  
11 resulting from disease, injury, functional disorder or congenital condition that impairs the  
12 individual's mental or physical ability to independently manage his or her property or financial  
13 resources, or both.

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

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

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

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

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

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

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

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

17           **§ 482. Financial Exploitation**

18           (a) A person commits financial exploitation of an elderly person or a dependent adult  
19 when he or she stands in a position of trust or confidence with the elderly person or dependent adult  
20 and he or she knowingly and by deception or intimidation obtains control over the property of an  
21 elderly person or a dependent adult or illegally uses the assets or resources of an elderly person or  
22 a dependent adult.

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

1           **§483. Punishment.**

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

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

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

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

7           **§484. Limitations.**

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

10          **§485. Good faith efforts.**

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

14          **§486. Not a defense.**

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

17          **§487. Civil Liability.**

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

25          (b) This section shall be operative whether the defendant has been charged or convicted of  
26 the criminal offense as described in section 482 of this Chapter. This section shall not limit or affect

1 the right of any person to bring any cause of action or seek any remedy available under the common  
2 law, or other applicable law, arising out of the financial exploitation of an elderly person or a  
3 dependent adult.

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

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#### **Bill Summary**

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

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